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Background information on the use of U.S. armed forces in the foreign countries - 1970

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FOREWORD

The question of the proper roles of the executive and legislative branches in a decision to engage United States armed forces in military action has become a serious national issue in light of the current public debate on the extent of U.S. involvement throughout the world. The issue is not a new one, however. The same basic constitutional and legal problems, which are being discussed today in regard to Southeast Asia, have been debated before in the nation's history. For instance, they were discussed two decades ago in regard to the conflict in Korea and the dispatch of troops to Europe.

At that time, during the so-called "Great Debate" of 1951, the House Committee on Foreign Affairs requested that two consultants on its staff, George Lee Millikan and Sheldon Kaplan, prepare an analysis of the issues involved in the use of United States armed forces in foreign countries. The resulting report proved to be a useful contribution to the national discussion of the issue. It has, however, long been out of print.

With the revival of the national debate over the proper exercise of the war powers in 1970, the Subcommittee on National Security Policy and Scientific Developments began an intensive study of legislation which had been introduced into the House defining more precisely the rights and prerogatives of each branch of government in the war-powers area. As part of that effort, we asked the Foreign Affairs Division of the Legislative Reference Service, Library of Congress, to bring the earlier report up to date. While basic constitutional issues remain the same, many developments have occurred since the report's first publication which bear directly on the problem.

This revision was prepared under the direction of Charles R. Gellner, Chief of the Foreign Affairs Division, and Ellen C. Collier, Specialist in U.S. Foreign Policy. Other contributors were Donald S. Bussey, Ernest S. Lent, Allan S. Nanes, and Leneice N. Wu.

The publication includes a brief analysis of the various constitutional provisions relating to the President's and Congress' powers to make war and to maintain and deploy U.S. armed forces abroad. It makes liberal use of excerpts from relevant documents, texts of important statements, citations of court decisions and quotations from authorities on the subject. It also includes an historical listing of instances where use has been made of United States armed forces in foreign countries, with pertinent congressional action in major instances which were not declared wars. The material presented here is not intended to cover all possible issues involved in the question under consideration; the purpose is to deal with several important phases of the subject and to present interpretations reflecting varying points of view.

It is the hope of the subcommittee that revision and republication of this document will provide a valuable source of information to the members of Congress and to the public who are attempting to come to grips with the complex questions posed by the concurrent jurisdiction over warmaking given to Congress and the President by the Constitution.

CLEMENT J. ZABLOCKI,
Chairman, Subcommittee on National Security Policy and Scientific Developments, Committee on Foreign Affairs.

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I. Introduction

The U.S. Constitution allocates war powers, as well as the foreign policy powers, to both the President and the Congress. However, this allocation was broadly framed, and this lack of precision was an "invitation to struggle" between the two branches. Historically, there has been a failure on the part of both to agree on their respective prerogatives, especially in regard to the war powers. In recent years, this failure has stemmed in large part from efforts to avoid impairing the effectiveness of the United States in its relations with authoritarian governments. Moreover, the Courts have hesitated to pass judgment on a question which they have considered to be a political, rather than a legal one.

While there has often been controversy in the past in regard to exercise of the war powers, recently the dispute over one of the most crucial aspects of the question, the sending of troops abroad, has reached a new dimension. The evolution of greater U.S. involvement in world affairs, as well as the inherent dangers of war in the nuclear age, are factors which must be considered in this controversy.

Twice since the end of the Second World War, first in Korea and then in Indochina, the United States has been heavily engaged in armed conflicts abroad. On other occasions, American troops have been sent to foreign countries in times of crisis, for example, to Lebanon in 1958 and the Dominican Republic in 1965. Additional critical situations, including the confrontation in the Formosa Straits in 1955 and the Cuban missile crisis in 1962, have been met by a use of American military forces. Through most of this period, even when there was no particular emergency, large numbers of American servicemen have been stationed in other countries in support of United States foreign policy, and weapons have been poised in the United States and abroad to retaliate in the event of a nuclear attack. All of these situations carried the risk of involving the nation in war.

In several instances, including the conflict in Korea in 1950, the dispatch of troops to Europe in 1951, the escalation of warfare in Vietnam in 1965, and the entrance into Cambodia in 1970, there have been great debates on procedures by which the United States armed forces have been sent abroad. This study will examine some of the constitutional issues brought to light in those debates. It is not intended to be a discussion of the merits of the policies themselves.

The fundamental issue is whether the President, particularly in his role as Commander in Chief, has the constitutional power to send troops abroad without congressional authorization. Are there some instances in which the President does have the right to send troops abroad and others in which he does not? Closely connected is the question of the meaning of the congressional power to declare war, and whether congressional authorization for sending troops to fight abroad either by a declaration of war or by some other act, is possible or required. A third issue involved is the extent to which Congress can

limit the President's use of armed forces in instances when congressional authorization has not been obtained.

II. The International Framework

Often in recent years, the delineation of the executive and legislative roles in sending troops abroad has become more confused because of the additional issues of international law involved. Most questions of the international legality of specific United States actions are outside the scope of this study. However, in many instances the war powers of the President and the Congress affect those procedures by which the United States must determine and meet its international obligations. Therefore, a brief summary of the international legal framework within which the United States must operate will be described.

A. UNILATERAL ACTION

The United States, as a sovereign nation, can act to protect its interests as it views them by whatever means it determines, subject to the law of nations, the self-imposed limitations of treaty obligations such as the United Nations Charter, and domestic constitutional or statutory prohibitions.

A relationship between the spheres of international and constitutional law was described by Mr. Justice Sutherland in *United States v. Curtiss-Wright Export Corporation:*

> Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens; and operations of the nation in such territory must be governed by treaties, international compacts and understandings, and the principles of international law. As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family. Otherwise, the United States is not completely sovereign.[1]

B. ACTION UNDER TREATY OBLIGATIONS

Because they might impose an obligation to use U.S. Armed Forces abroad, treaties are relevant to the exercise of the war powers in two respects. First, initial adoption of such a treaty obligation requires joint approval by the President and the Senate, that is, a measure of legislative-executive cooperation. Second, subsequent fulfillment of such an obligation can lead to either cooperation or conflict between the President and the Congress in the exercise of their respective war powers. Although executive agreements may also be a source of international obligation, their increased use in place of treaties will not be discussed in this study.

Article VI of the United States Constitution provides that the Constitution, laws of the United States, and all treaties made under the authority of the United States shall be the supreme law of the land. The provisions of a treaty may establish a legal basis for certain actions which would not exist in the absence of that treaty or specific legislation.

Not all treaty provisions are self-executing, however. Some require legislation to enable the United States to carry out its part. In such cases Congress plays a major role in determining the manner in which a treaty is to be interpreted and carried out by the United States.

[1] (1936) 299 U.S. 304, p. 318.

Congress may also exercise its legislative power so as to nullify or supersede a treaty obligation. Chief Justice Taft, in his decision of 1923 as sole arbitrator between Great Britain and Costa Rica, made the point:

> * * * a treaty may repeal a statute, and a statute may repeal a treaty. The Supreme Court cannot under the Constitution recognize and enforce rights accruing to aliens under a treaty which Congress has repealed by statute.[2]

Even though Congress may by legislative act nullify and supersede a treaty, the international obligation of the United States under the treaty is not thereby terminated. Judge John Bassett Moore, discussing a case involving an act of Congress contrary to provisions of an earlier treaty, says:

> It was held that the act of October 1, 1888, was a constitutional exercise of legislative power, and that, so far as it conflicted with existing treaties, it operated to that extent to abrogate them as part of the municipal law of the United States though it could not have the effect of destroying their international obligation.[3]

Secretary of State Hughes elaborated the point in a memorandum of February 19, 1923, to Secretary of the Treasury Mellon as follows:

> * * * a judicial determination that an act of Congress is to prevail over a treaty does not relieve the Government of the United States of the obligations established by a treaty. The distinction is often ignored between a rule of domestic law, which is established by our legislative and judicial decisions and may be inconsistent with an existing treaty, and the international obligation which a treaty establishes. When this obligation is not performed, a claim will inevitably be made to which the existence of merely domestic legislation does not constitute a defense; and, if the claim seems to be well founded and other methods of settlement have not been availed of, the usual recourse is an arbitration in which international rules of action and obligations would be the subject of consideration.[4]

Treaty provisions might obligate the United States to take armed action against other states. While this country has never promised by treaty to go to war automatically in specific circumstances, it has entered into formal engagements that might conceivably result in the use of American forces in war or other armed hostilities.[5] Whether treaties, such as the North Atlantic Treaty (NATO) or the Southeast Asia Collective Defense Treaty (SEATO), obligates the United States to take armed or other action in specific situations is not the issue in the problem of determining executive and legislative powers in sending troops abroad. The issue is what role each branch should play in determining first, whether a treaty obligates the United States to send armed forces, and second, in what manner this obligation is to be met.

There have been conflicting opinions on both of these points. A memorandum prepared by Leonard C. Meeker, Legal Adviser of the

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[2] 5 Hackworth, Digest of International Law, p. 195.

[3] V. Moore's Digest of International Law, p. 367, discussing the Chinese Exclusion case (1899), 130 U.S. 581.

[4] Hackworth, *op. cit.*, pp. 194–195.

[5] The North Atlantic Treaty, signed April 4, 1949, states "the parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and . . . each of them . . . will assist the . . . attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary including the use of armed force. . . ."

The Inter-American Treaty of Reciprocal Assistance, signed September 2, 1947, states that an armed attack against any American State "shall be considered as an attack against all the American States and . . . each one . . . undertakes to assist in meeting the attack."

In the ANZUS Treaty with Australia and New Zealand, signed September 1, 1951, the Southeast Asia Collective Defense Treaty signed September 8, 1954, and the bilateral security treaties with the Philippines (August 30, 1951), Japan (January 19, 1960), the Republic of Korea (October 1, 1953), and the Republic of China (December 2, 1954), each party "recognizes" that an armed attack in the specified area would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes.

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Department of State, on the legality of United States participation in the defense of Vietnam on March 4, 1966, stated:

> Article IV, paragraph 1, of the SEATO Treaty establishes as a matter of law that a Communist armed attack against South Vietnam endangers the peace and safety of the United States. In this same provision the United States has undertaken a commitment in the SEATO Treaty to "act to meet the common danger in accordance with its constitutional processes" in the event of such an attack.
>
> Under our Constitution it is the President who must decide when an armed attack has occurred. He has also the constitutional responsibility for determining what measures of defense are required when the peace and safety of the United States are endangered. If he considers that deployment of U.S. forces to South Vietnam is required, and that military measures against the source of Communist aggression in North Vietnam are necessary, he is constitutionally empowered to take those measures.[6]

On the other hand, Lawrence R. Velvel writes:

> A treaty cannot override the Constitution, and under the Constitution it is the Congress, not the President, which is to declare war. Thus, the Congress must decide whether particular treaty obligations require entry into war. The words "constitutional process" in the SEATO Treaty therefore must mean that the Congress shall make this decision. If they mean the President shall make it, then in this respect the SEATO Treaty is void under the United States Constitution because it in effect gives the President the power to declare war. Neither can it be argued that, because the Senate approves treaties, the Senate has delegated the power to declare war to the President. As will be later pointed out, the power to declare war cannot be delegated to the President even by the full Congress. Still less can it be delegated by the Senate, since it does not belong to the Senate alone, but to the Senate and House together.[7]

Francis D. Wormuth writes:

> The general principle is that the treaty power cannot be used in such a way as to alter the constitutional distribution of powers. So the United States objected to the proposal for the creation of an international Prize Court because the Constitution does not permit appeals from decisions of the United States Supreme Court. In *Reid v. Covert* in 1957 the Supreme Court had before it an act of Congress which provided for the trial of civilian dependents of military personnel abroad, thus ousting the constitutional courts of their jurisdiction under Article III and depriving the dependents of their right to jury trial. The government justified the act as one necessary to carry out executive agreements with Great Britain and Japan which were treated as having the force of treaties. Justice Black said: "The obvious and decisive answer to this, of course, is that no agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution." [8]

C. THE UNITED NATIONS CHARTER

Among all the treaties to which the United States is a party and which have a bearing on the use of American forces abroad in the postwar era, the United Nations Charter is in a category by itself for several reasons. One of its purposes is to establish a system "to maintain international peace and security, and to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace . . ." Thus, it establishes new terms for utilizing armed force for the maintenance of international peace.

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[6] Meeker, Leonard C., Legal Adviser. "The Legality of U.S. Participation in Defense of Vietnam." Department of State Bulletin, vol. 54, March 28, 1966, p. 485.

[7] Velvel, Lawrence R., The War in Vietnam: Unconstitutional, Justiciable, and Jurisdictionally Attackable. *In* Richard A. Falk, ed. The Vietnam War and International Law, v. 2, Princeton, Princeton University Press, 1969. p. 657.

[8] Wormuth, Francis D. The Vietnam War: The President versus the Constitution. *In* Richard A. Falk, ed., *op. cit.*, p. 775.

Similarly, it places new limitations on the use of force by United Nations members. Moreover, according to the terms of the Charter its provisions prevail over the obligations under any other treaty. Article 103 states:

> In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

The United Nations Charter, having been ratified by the President after the Senate had approved it, became operative on October 24, 1945. The legal force of treaties under the Constitution is described by Hackworth:

> It is well settled by the decisions of the United States Supreme Court that treaty provisions, which are self-executing in the sense that they require no additional legislation to make them effective, are equivalent to and of like obligation with an act of Congress. The Constitution declares that both shall be the supreme law of the land, and both are equally binding upon the courts.[9]

As with all treaties, therefore, the self-executing provisions of the Charter became the supreme law of the land. Certain of the non-self-executing provisions were made effective by the Congress in the "United Nations Participation Act of 1945." [10]

The late E. S. Corwin, in his classic work on the Presidency, observes with regard to the United Nations Participation Act that:

> * * * American implementation of the Charter, and hence its ultimately binding interpretation for the United States, is based *on the national legislative power*, not on the treaty-making power, nor on Presidential prerogative. * * * the *controlling theory of the act is that American participation in United Nations shall rest on the principle of departmental collaboration, and not on an exclusive Presidential prerogative in the diplomatic field.*[11]

It is important to examine the question of international obligations relating to the use of armed forces abroad which the United States incurs as a member of the United Nations. The starting point is the provision in article 25 by which:

> * * * the members of the United Nations agree to accept and carry out the *decisions* of the Security Council * * *

According to Hans Kelsen, professor at the University of California (Berkeley), this provision may be interpreted to mean:

> * * * the members are obligated to carry out all resolutions of the Security Council which the Security Council is authorized by the Charter to issue with the intention to bind the members at whom they are directed; that is to say all resolutions which the Charter does not characterize in a way which permit the interpretation that they shall not have a binding force, such as "recommendations" or "plans." [12]

Secretary of State Stettinius commented on this article as follows:

> The precise extent of the obligation of members under article 25 can be determined only by reference to other provisions of the Charter, particularly chapters VI, VII, VIII, and XII (art. 24, par. 2). Decisions of the Security Council take on a binding quality only as they relate to the prevention or suppression of breaches of

[9] Hackworth, *op. cit.*, p. 191, citing *Foster v. Neilson* (1829), 2 Pet. 253, 314; *The Cherokee Tobacco* (1870), 11 Wall. 616, 621; *Chew Heong v. United States* (1884), 112 U.S. 536; *Head Money* cases (1884), 112 U.S. 580, 599; *Whitney v. Robertson* (1888), 124 U.S. 190, 194.

[10] Public Law 264, 79th Cong., 1st sess. (59 Stat. 619), as amended by Public Law 341, 81st Cong., 1st sess. (63 Stat. 734).

[11] Corwin, Edward S. The President, Office and Powers, 1787-1957. New York, New York University Press, 1957. p. 221.

[12] Law of the United Nations, London, 1950, pp. 95-96.

the peace. With respect to the pacific settlement of disputes, the Council has only the power of recommendation. Moreover, with respect to enforcement measures, the character and amount of military assistance which members of the organization place at the disposal of the Council will be governed by the terms of special agreements which are provided for in article 43.[13]

Once the Security Council has determined the existence of any threat to the peace, breach of the peace or any aggressive action, it can either *recommend* or *decide* what measures shall be taken under articles 41 and 42 of the Charter. Article 41 covers measures which do not involve the use of armed force, whereas Article 42 includes action by military forces "necessary to maintain or restore international peace and security." These military forces are to be made available to the Security Council, according to Article 43, by the member states through "special agreements."[14]

No agreements have been made under article 43, and, consequently, no forces have been "made available" to the Security Council. As far as the United States is concerned, Section 6 of the United Nations Participation Act furnishes authority to the President to negotiate a special agreement or agreements with the Security Council providing armed forces to be made available to the Council under article 43 of the Charter. Such agreements are made subject to approval of the Congress. Section 6 further provides that no authorization of the Congress is necessary for the President to implement any action that may be taken by the Security Council under article 42 of the Charter.[15] But since the U.S. has concluded no agreements under article 43 of the Charter, Section 6 of the United Nations Participation Act has not been applied. The net impact of article 42, on the United States, then, is that while the United States has obligations for the use of its

[13] Report to the President on the resolutions of the San Francisco Conference on the Charter of the United Nations, Department of State Publication 2349, 1945, p. 79.

[14] Articles 41, 42, and 43 read as follows:

ARTICLE 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

ARTICLE 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

ARTICLE 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.
2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

[15] Sec. 6 is as follows: "The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of the Congress by appropriate Act or joint resolution, providing for the numbers and types of armed forces, their degree of readiness and general location, and the nature of facilities and assistance, including rights of passage, to be made available to the Security Council on its call for the purpose of maintaining international peace and security in accordance with article 43 of said Charter. The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of said Charter and pursuant to such special agreement or agreements the armed forces, facilities or assistance provided for therein; *Provided*, That nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities, or assistance in addition to the forces, facilities, and assistance provided for in such special agreement or agreements."

forces under this article, these obligations remain inoperative until some agreement for their use is approved by the Congress and comes into force.

There remains one other ground under the Charter for the use of armed forces: the general obligation to "support the United Nations." This is not, however, a legal obligation; it is more in the nature of an affirmative action in support of a general policy. In this situation, the use of armed forces is not an obligation upon the United States, but again a determination to be made by the United States on essentially nonlegal grounds. It is this category of action which includes the "peacekeeping" operations which have been developed under the United Nations.

When not specifically called for or recommended under the processes of the United Nations, the use of armed force is forbidden by the Charter, except under certain circumstances. These provisions are explained by the Legal Adviser of the Department of State as follows:

> The Charter of the United Nations, concluded at the end of World War II, imposed an important limitation on the use of force by United Nations members. Article 2, paragraph 4, provides:
>
> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."
>
> In addition, the charter embodied a system of international peacekeeping through the organs of the United Nations. Article 24 summarizes these structural arrangements in stating that the United Nations members:
>
> "* * * confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf."
>
> However, the charter expressly states in article 51 that the remaining provisions of the charter—including the limitation of article 2, paragraph 4, and the creation of United Nations machinery to keep the peace—in no way diminish the inherent right of self-defense against armed attack. Article 51 provides:
>
> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."
>
> Thus, article 51 restates and preserves, for member states in the situations covered by the article, a long-recognized principle of international law. The article is a "saving clause" designed to make clear that no other provision in the charter shall be interpreted to impair the inherent right of self-defense referred to in article 51.[16]

While the Charter might impose certain international obligations on member states, it does not address itself to the internal procedures by which they determine and fulfill these obligations. Therefore, nothing in the Charter affects the basic division of powers under the U.S. Constitution for the use of armed forces abroad.

III. The Constitutional Framework

Whatever the obligations and rights of the United States under treaties and other elements of international law, the determination of who speaks and acts as "the Government" of the United States, is entirely a matter of internal constitutional and statutory arrangement.

[16] Meeker, Leonard C., *op cit.*, p. 475.

In this respect, "the Government" is the National Government, not the State governments. The Constitution specifically prohibits the States from exercising powers of foreign relations; and the States cannot, without the consent of Congress, "engage in war, unless actually invaded or in such imminent danger as will not admit of delay."[1] Nor can private citizens engage in diplomatic activities. This has been prohibited by law since 1799.[2]

Federal power in foreign affairs, according to the Supreme Court in the *Curtiss-Wright* case, is "in origin and essential character different from that over internal affairs * * *"[3] The Court said:

> * * * the investment of the Federal Government with the powers of external sovereignty did not depend upon affirmative grants of the Constitution. The powers to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the Constitution, would have vested in the Federal Government as necessary concomitants of nationality.[4]

Within the National Government, the executive and the legislative branches have all the constitutional power and responsibility for the conduct of relations with other countries.

A. THE SHARING OF POWER BETWEEN THE PRESIDENT AND CONGRESS

The President's powers in foreign relations as set forth in the Constitution are:

Article II, section 2:

> * * * He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls * * *.

Article II, section 3:

> * * * he shall receive Ambassadors and other public Ministers; . . .

Article II, section 3, provides that "he shall take Care that the Laws be faithfully executed." So far as relations with other nations are concerned, "the laws" includes treaty obligations; any obligation inferable from the Constitution; and the rights, duties, and obligations growing out of the Constitution itself, international relations and all the protection implied by the nature of government under the Constitution.[5]

Article II, section 2, specifies that:

> The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual Service of the United States * * *

The role of the President as the representative of the Nation in foreign relations was enunciated by the Supreme Court in 1936 in *United States v. Curtiss-Wright Export Corporation*. The Court said:

> Not only, as we have shown, is the Federal power over external affairs in origin and essential character different from that over internal affairs, but participation in the exercise of the power is significantly limited. In this vast external realm,

[1] Art. 1, sec. 10.

[2] Act of January 30, 1799, entitled "An act to prevent usurpation of Executive functions" (1 Stat. 613). This is the so-called Logan Act, enacted after George Logan, a Philadelphia Quaker, had undertaken private diplomatic negotiations with France in an effort to avert war between the United States and France. The Logan Act is still law. See U.S. Code, title 18, sec. 953.

[3] *U.S. v. Curtiss-Wright Export Corporation* (1936), 299 U.S. 304, p. 319.

[4] *Ibid.*, p. 318.

[5] Taft, W. H., Our Chief Magistrate and His Powers, New York, 1925, pp. 87, 88, 91, citing *In re Neagle* (1889), 135 U.S. 1; *U.S. v. Logan* (1892), 144 U.S. 263.

with its important, complicated, delicate, and manifold problems, the President alone has the power to speak or listen as a representative of the Nation. He makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it. As Marshall said in his great argument of March 7, 1800, in the House of Representatives, "The President is the sole organ of the Nation in its external relations, and its sole representative with foreign nations" (Annals, 6th Cong., column 613).[6]

The powers of Congress primarily concerned with foreign affairs are the following, found in article I, section 8, of the Constitution:

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; * * *
To borrow money on the credit of the United States;
To regulate Commerce with Foreign Nations, * * *
To establish a uniform Rule of Naturalization, * * *
To coin Money, regulate the Value thereof, and of Foreign Coin, * * *
To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;
To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
To provide and maintain a Navy;
To make Rules for the Government and Regulation of the land and naval Forces;
To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, * * *
To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article I, section 9, provides that—

no money shall be drawn from the treasury but in consequence of appropriations made by law. * * *

In addition to these legislative powers, the Senate participates in the treaty-making process and the appointment power.

All of these powers give the Congress a considerable voice in the determination of foreign policy and defense policy and the actions taken in support of them. Congress enacts the laws for the President to execute, it raises and supports the armies of which the President is Commander in Chief; in it, through the "power of the purse," rests a vast and extensive power to determine the scale of government structure and staffing.

Thus, in the fields of foreign affairs and national defense, as in other fields of governmental activity, many powers are shared by or divided between the executive and legislative branches. It is evident from the enumeration of executive and legislative powers that both branches have a constitutional voice in the major decisions affecting the country's foreign relations and military defense.

Edward S. Corwin has written:

What the Constitution does, *and all that it does*, is to confer upon the President certain powers capable of affecting our foreign relations, and certain other powers of the same general nature upon the Senate, and still other such powers upon Congress; but which of these organs shall have the decisive and final voice in determining the course of the American nation is left for events to resolve.

[6] 299 U.S. 304, pp. 319–320.

All of which amounts to saying that the Constitution, considered only for its affirmative grants of power which are capable of affecting the issue, is an invitation to struggle for the privilege of directing American foreign policy. In such a struggle the President has, it is true, certain great advantages, which are pointed out by Jay in *The Federalist*; the unity of the office, its capacity for *secrecy* and *dispatch* and its superior sources of *information*; to which should be added the fact that it is always on hand and ready for action, whereas the houses of Congress are in adjournment much of the time.

But despite all this, actual *practice* under the Constitution has shown that while the President is usually in a position to *propose*, the Senate and Congress are often in a technical position at least to dispose. The verdict of history, in short, is that the power to determine the substantive content of American foreign policy is a *divided* power, with the lion's share falling usually to the President, though by no means always.[7]

In the areas in which the powers relating to foreign policy are shared by Congress and the President and in which considerable conflict has developed, such as the sending of troops abroad, the issues have not been resolved by judicial decisions. According to one study:

The resolution of these problems has largely been left to historical practice. The courts have from the beginning shown a reluctance to enter this classic separation-of-powers debate and, on the particular issue of the proper allocation of the power to embark on war, have been virtually silent. What answer there is to the constitutional issue must come from the interpretations provided through history by the two concerned parties themselves—the President and Congress.[8]

The study points out that in recent attempts to bring the constitutionality of the President's actions in Vietnam before the courts, the cases have been dismissed as involving political questions.[9]

B. NATURE OF THE PRESIDENT'S POWER AS COMMANDER IN CHIEF

Of particular relevance to the issue of sending troops abroad is the role of the President as Commander in Chief. As previously noted, under Article II, section 2 of the Constitution, "the President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual Service of the United States." The nature of the President's power, as Commander in Chief, over the armed forces of the United States has been variously defined by the courts and students of constitutional law.

The Constitution confers the office of Commander in Chief on the President, who nevertheless remains a civilian. While his powers as Commander in Chief are directed toward the military, the President is a civil officer.[10] In the case of *Youngston Sheet and Tube Co. v. Sawyer*, Mr. Justice Jackson expands upon the significance of this provision:

There are indications that the Constitution did not contemplate that the title Commander-in-Chief *of the Army and Navy* will constitute him also Commander-in-Chief of the country, its industries and its inhabitants. He has no monopoly of "war powers," whatever they are. While Congress cannot deprive the President of the command of the army and navy, only Congress can provide him an army or navy to command. It is also empowered to make rules for the "Government and Regulation of land and naval forces," by which it may to some unknown extent impinge upon even command functions.

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[7] Corwin, Edward S., *op. cit.*, p. 171.
[8] Notes. Congress, the President, and the Power to Commit Armed Forces to Combat. 81 Harvard Law Review (1968) 1771, at p. 1778.
[9] *Ibid.*
[10] U.S. *Congress, Senate*. The Constitution of the United States of America. Analysis and interpretation. 88th Cong. 1st sess. S. Doc. 39. Washington, U.S. Govt. Print. Off., 1964. p. 454.

> . . . We should not use this occasion to circumscribe, much less to contract, the lawful role of the President as Commander-in-Chief. I should indulge the widest latitutde of interpretation to sustain his exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society. . . . His command power is not such an absolute as might be implied from that office in a militaristic system but is subject to limitations consistent with a constitutional Republic whose law and policy-making branch is a representative Congress. The purpose of lodging dual titles in one man was to insure that the civilian would control the military, not to enable the military to subordinate the presidential office. No penance would ever expiate the sin against free government of holding that a President can escape control of executive powers by law through assuming his military role. What the power of command may include I do not try to envision, but I think it is not a military prerogative, without support of law, to seize persons or property because they are important or even essential for the military and naval establishment.[11]

Originally, it was only the military aspects of the Commander in Chief role that were stressed. This provision of the Constitution was interpreted as simply placing the President at the top of the pyramid of military command. Hamilton said the office "would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and Admiral of the Confederacy. * * *"[12] The authority of the President as Commander in Chief to repel a sudden attack or to prosecute a war after it is declared, is unchallenged, an intent of the framers which the drafting history of the Constitution makes clear. According to E. S. Corwin, "the power of the President as Commander in Chief is primarily that of military command in wartime, and as such, includes * * * all the power allowed a military commander in such cases by the Law of Nations."[13]

In 1850, Justice Taney said that the President's "duty and his power are purely military. As Commander in Chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy."[14] Despite the broader conception of the Commander in Chief role which emerged from the Civil War, a powerful minority of the Court described the role of President as Commander in Chief simply as "the command of the forces and the conduct of campaigns."[15]

As the Supreme Court said in *United States v. Sweeny*, the object of the Commander in Chief clause "is to vest in the President the supreme command over all the military forces—such supreme and undivided command as would be necessary to the prosecution of a successful war."[16]

This interpretation of the command authority of the President was reiterated in 1939 by a Federal District Court in *Nordmann v. Woodring*, wherein it was stated that "the President has the power to employ the Army and the Navy in a manner which he may deem most effectual. This includes the power to establish rules and regulations for the government of the Army and the Navy and such regulations made pursuant to the authority thus conferred upon the President have the force of law."[17]

The President's powers include the power to establish rules and regulations for the government of the Army. In *United States v.*

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[11] (1952) S. Ct. 863, at pp. 874–875.
[12] The Federalist, No. 69.
[13] The Constitution and What It Means Today (9th Ed.), Princeton, 1947, p. 93.
[14] *Fleming* v. *Page* (1850) 9 How. 602, at p. 615.
[15] *Ex parte Milligan* 1866 4 Wall. 2, at p. 139.
[16] (1895) 157 U.S. 281, at p. 284.
[17] (1939) 28 F. Supp. 573, at p. 576.

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Eliason, the Supreme Court said that "the power of the Executive to establish rules and regulations for the government of the Army is undoubted." [18] In 1863, President Lincoln directed the issuance by the War Department of General Order 100, setting forth a code of rules to govern the conduct in the field of the armies of the United States during the Civil War. However, the President's power "must be exercised in accordance with the laws and usages of nations, and in conformity with acts of Congress, where the legislature possesses regulatory power; otherwise his order will afford no protection to an officer acting under them." [19]

In defining the powers of the President as Commander in Chief, the courts have recognized that these powers must be understood within a constitutional and legal framework that takes into account the enumerated powers of the Congress. "Congress has the right to legislate for the Army, not impairing his efficiency as such Commander in Chief, and when a law is passed for the regulation of the Army, having that constitutional qualification, he becomes as to that law an executive officer, and is limited in the discharge of his duty by the statute." [20]

Similarly, in *Swaim v. U.S.*, the Court declared as follows:

> * * * there remains the significant fact in our military system that the President is always the Commander in Chief. Congress may increase the Army, or reduce the Army, or abolish it altogether; but so long as we have a military force Congress cannot take away from the President the supreme command. It is true that the Constitution has conferred upon Congress the exclusive power "to make rules for the government and regulation of the land and naval forces"; but the two powers are distinct; neither can trench upon the other; the President cannot under the disguise of military orders, evade the legislative regulations by which he in common with the Army must be governed; and Congress cannot in the disguise of "rules for the government" of the Army impair the authority of the President as Commander in Chief.[21]

As observed by Professor F. R. Black:

> Congress itself cannot direct the conduct of campaigns. It cannot delegate that power to any person or persons. It can legislate relative to the size of the Army and Navy, the compensation of officers and men, the term of service as well as many matters, but the command of the Army and Navy, and with that the plan of campaign, is vested in the President.[22]

In sum, "there are no express limitations on the President's power as Commander in Chief of the Army and Navy." But the framers of the Constitution "gave him no Army or Navy to Command. For this, he must come to Congress." [23]

In his capacity as Commander in Chief, it was visualized that the President would give orders and generally superintend the Army and Navy; however, "it would be dangerous to let him command in person, without any restraint, as he might make a bad use of it." [24] The only instance in which the Commander in Chief actually exercised direct command in the field was Washington during the Whiskey Rebellion in 1794.

At times, Presidents have delegated supreme command of the forces in active service. At other times, they have personally exercised

[18] (1842) 16 Pet. 291, at p. 301.
[19] *Little v. Barreme* (1804) 2 Cr. 170.
[20] *McBlair v. U.S.* (1884) 19 Ct.Cls. 528, at p. 543, *see also*, *The Flying Fish* (1814) 6 U.S. 170.
[21] (1893) 28 Ct. Cls. 173, at p. 221; affirmed (1897) 165 U.S. 553.
[22] The Theory of the War Power Under the Constitution, 60 American Law Review (1926) 31, p. 60.
[23] *Ibid.*, p. 58.
[24] Story, *Commentaries*, 1492.

command. In 1862, Lincoln ordered a general advance in the hope of stimulating General McClellan to action. In 1945, Truman ordered use of the atomic bomb against Japan. With the growing requirement for close coordination of diplomatic and military undertakings in the post World War II period, Presidents have tended to exert increasing control over military operations, especially in the conduct of the war in Vietnam.

C. NATURE OF THE CONGRESSIONAL POWER TO DECLARE WAR

According to the Constitution, the power to declare war rests solely in the Congress.

As the Supreme Court said in *U.S. v. Macintosh*

> The Constitution * * * wisely contemplating the ever-present possibility of war, declares that one of its purposes is to "provide for the common defense." In express terms Congress is empowered "to declare war," which necessarily connotes the plenary power to wage war with all the force necessary to make it effective; and "to raise * * * armies," which necessarily connotes the like power to say who shall serve in them and in what way.[25]

However, while the Congress has the power to *declare* war, the President as Commander in Chief has the power to *make* war in the sense of conducting it. This is indicated by the debates in the Constitutional Convention on the question of vesting in Congress the power "to make war":

> Mr. Pinkney opposed the vesting this power in the legislature. Its proceedings were too slow * * *
>
> Mr. Butler * * * He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.
>
> Mr. M(adison) and Mr. Gerry moved to insert "declare," striking out "*make*" war; leaving to the Executive the power to repel sudden attacks.
>
> Mr. Sharman thought it stood very well. The Executive shd. be able to repel and not to commence war. "Make" better than "declare" the latter narrowing the power too much.[26]

The word "make" was changed to "declare," and in a *Harvard Law Review* article, it is concluded that:

> At most, the sole reason for the substitution was to confirm the Executive's power "to repel sudden attacks." In all other cases the commitment of the country to a trial of force with another nation was to remain the prerogative of Congress.[27]

Giving further evidence of the intent of the framers, a letter written by Thomas Jefferson to Madison in 1789 stated:

> We have already given in example one effectual check to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay.[28]

W. Taylor Reveley's comments on the Constitutional Convention conclude that;

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[25] (1930) U.S. 605, at p. 622.

[26] Ferrand, Max, *ed*. The Records of the Federal Convention of 1787 vol. II. New Haven, Yale University Press, 1966. pp. 318-319.

[27] Harvard Law Review, *op. cit.*, p. 1773. In Madison's notes on the Constitutional Convention, a footnote was added to Connecticut's dissenting vote on the motion to change "make" war to "declare":

> On the remark by Mr. King that "make" war might be understood to "conduct" it which was an Executive function, Mr. Elseworth gave up his objection (and the vote of Cont. [Connecticut] was changed to—ay). Max Ferrand, *ed.*, *op. cit.*, p. 319.

The *Harvard Law Review* article notes that "At least one delegate, Mr. Elseworth, changed his vote when it was pointed out that 'make war' might be construed to give Congress power to 'conduct war' *after it had begun*—a function clearly meant to be given to the Executive." Emphasis added, p. 1773, footnote 16.

[28] Boyd, Jules, *ed*. The Papers of Thomas Jefferson, Princeton, Princeton University Press, 1955, v. 15, p. 397.

> It seems reasonably clear * * * that the Drafters intended decisions regarding the *initiation* of force abroad to be made not by the President alone, not by the Senate alone, nor by the President and the Senate, but by the entire Congress subject to the signature or veto of the President. The Framers recognized the potentially momentous consequences of foreign conflict and wished to check its unilateral initiation by any single individual or group. Madison expressed this concern early in the Constitutional Convention: "A rupture with other powers is among the greatest of national calamities. It ought therefore to be effectually provided that no part of a nation shall have it in its power to bring them [wars] on the whole." Foreign conflicts, since they involve the entire nation, are to be begun only after both legislative houses and the Executive have been heard, even at the cost of some delay in reaching a decision.[29]

In a legal memorandum prepared by the State Department in 1966, Leonard Meeker translates the intent of the framers regarding repulse of a sudden attack into a different context today:

> In 1787 the world was a far larger place, and the framers probably had in mind attacks upon the United States. In the 20th century, the world has grown much smaller. An attack on a country far from our shores can impinge directly on the nation's security. * * * The Constitution leaves to the President the judgment to determine whether the circumstances of a particular armed attack are so urgent and the potential consequences so threatening to the security of the United States that he should act without formally consulting the Congress.[30]

More recently, Assistant Attorney General William Rehnquist commented on the Constitutional Convention in a speech on the constitutionality of the President's actions in Cambodia:

> An examination of the proceedings of the Constitutional Convention . . . indicates that the framers did not intend to precisely delimit the boundary between the power of the Executive Branch and that of the Legislative Branch. While rejecting the traditional power of kings to commit unwilling nations to war, they at the same time recognized the need for quick Executive response to rapidly developing international situations.[31]

The Senate Foreign Relations Committee report on the National Commitments Resolution of 1969 granted the President's constitutional powers to "repel sudden attacks" against the United States:

> A careful study of the Constitution and of the intent of the framers as set forth in the extensive documentation which they bequeathed to us leaves not the slightest doubt that, except for repelling sudden attacks on the United States, the founders of our country intended decisions to initiate either general or limited hostilities against foreign countries to be made by the Congress, not by the Executive.[32]

But the Committee did not approve of the extension of Presidential power to the defense of other countries. The report cited a previous Committee report on the North Atlantic Treaty, to illustrate the congressional interpretation of the constitutional considerations under the Treaty's provisions:

> * * * Would the United States be obligated to react to an attack on Paris or Copenhagen in the same way it would react to an attack on New York City? In such an event does the treaty give the President the power to take any action without specific congressional authorization which he could not take in the absence of the treaty? The answer to both of these questions is "No."

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[29] Reveley W. Taylor, III. Presidential War-Making: Constitutional Prerogative or Usurpation? Virginia Law Review v. 55, November 1969, p. 1284. In a footnote to this passage, Reveley explains:

> In short, an attempt was made to devise a scheme in which war would be entered upon only after measured deliberation, thus avoiding involvement in conflicts where the costs, upon reflection, appeared to outweigh the gains, or where the primary "gains" would be executive aggrandizement or the satiation of popular passion. These checks were intended to insure that the fighting would be supported by most Americans, thus avoiding disastrous internecine struggle within the country over war policy.

[30] Meeker, Leonard C., *op. cit.* pp. 484-85.

[31] Rehnquist, William H., Assistant Attorney General, Office of the Legal Counsel, Department of Justice. "The President's Constitutional Authority to Order the Attack on the Cambodian Sanctuaries." Remarks before the Association of the Bar of the City of New York, May 28, 1970, p. 3.

[32] U.S. *Congress. Senate. Committee on Foreign Relations.* National Commitments. Report, April 16, 1969. 91st Cong., 1st sess. No. 91-129. Washington. U.S. Govt. Print. Off., 1969. pp. 30-31.

The Committee report on the North Atlantic Treaty also stated:

> * * * The Committee does not believe it appropriate in this report to undertake to define the authority of the President to use the armed forces. Nothing in the treaty, however, including the provision that an attack against one shall be considered an attack against all, increases or decreases the constitutional powers of either the President or the Congress or changes the relationship between them.

The report on the commitments resolution added the following comments:

> There seems to have been general agreement that the * * * postwar security treaties did not change the relative powers of Congress and the President with respect to the use of the armed forces. There was little agreement, however, on what exactly those relative powers were * * * because, as the trend toward executive control accelerated, constitutional considerations were neglected and the *de facto* power of the President came to be accepted as a constitutional power.[23]

IV. Precedents in the Use of Forces Beyond the National Boundary

The power of the President as Commander in Chief has been exercised on many occasions—sometimes under a declaration of war, sometimes with other types of Congressional authorization or support, and sometimes without Congressional sanction.

Authorities differ on the number of instances in which American troops have been landed abroad for the protection of American interests. A State Department list of armed actions taken by the United States without a declaration of war shows a total of 137 such actions.[1] In his doctoral thesis, "The United States Congress and the Power to Use Military Force Abroad," Robert William Russell compiled a list of the uses of American military force abroad from 1789–1967, which has 144 entries. The author assigns no numbers to the incidents, however, and gives no totals, "because the figures would be meaningless without further analysis." The differences in numbers between these lists, and between them and others, reflect differences in individual interpretations. The State Department list, for example, does not include either the Bay of Pigs or the Cuban missile crisis, which are included in the Russell compilation. Yet the State Department has an entry for armed action in Laos in 1964–65, which is missing from the Russell list. Appendix I of this report represents a judgment as to which U.S. armed interventions overseas represented major military actions. It is divided into actions which were declared wars and those which were unaccompanied by a formal declaration of war, for which relevant congressional action is noted. Appendix II is a comprehensive list of all such military actions, both major and minor, drawn from a number of sources.

The number of troops involved in these incidents of the application of military force varies greatly. They range from a few sailors or marines landed to protect American lives and property, to hundreds of thousands in Vietnam and to millions in World War II. Most applications of force were of short duration, although some, like Korea or Vietnam, lasted a number of years. Those undertaken at Presidential initiative were often backed up by subsequent congressional action. Some of

[23] *Ibid*, p. 47.

[1] Armed Actions Taken by the United States Without A Declaration of War, 1789–1967. Research Project 806A. Historical Studies Division, Historical Office, Bureau of Public Affairs, Department of State. August, 1967. 30 pp.

these incidents, whether, supported by congressional action or not, developed into situations analogous to war.

A. PROTECTION OF LIVES AND PROPERTY

Many of the actions not involving a declaration of war have directly concerned the protection of American lives and property.

The fourteenth amendment to the Constitution guarantees the privileges and immunities of citizens of the United States, and these have been held to include the right of protection abroad. In 1873, in the *Slaughter House Cases*, the Supreme Court said:

> Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this, there can be no doubt, nor that the right depends upon his character as a citizen of the United States.[2]

It has been held that the President may use the armed forces in foreign territory to give this protection.[3] There is also a sufficient basis for this action in international law, which has recognized the right of a state to employ its armed forces for the protection of lives and property of nationals abroad. Such action is permissible where the state in which nationals reside, because of revolutionary disturbances or other reasons, is unable or unwilling to afford them the protection to which they are entitled.[4]

In 1854, the President directed United States naval forces to bombard Greytown, Nicaragua, because of the failure of that country to make reparation for an attack upon the American consul. The legality of this act was questioned in *Durand v. Hollins*. Mr. Justice Nelson, sustaining the action, said:

> Now as respects the interposition of the Executive abroad, for the protection of the lives or property of the citizen, the duty must, of necessity, rest in the discretion of the President. Acts of lawless violence, or of threatened violence to the citizen and his property, cannot be anticipated and provided for, and the protection, to be effectual * * * may * * * require the most prompt and decided action. * * * The great object and duty of government is the protection of the lives, liberty, and property of the people composing it, whether abroad or at home * * * *[5]

The Boxer Uprising of 1900–1901, which led to the capture of Peking by the armed forces of the United States, Great Britain, France, Russia, and Japan, is a good example of what was in reality action by an "international police force" to protect lives and property. Without waiting for congressional authorization, President McKinley sent an American contingent of 2,500 soldiers to fight—together with the forces of other countries—in "preventing a spread of the disorders or their recurrence."[6] The nature of the operation, involving the joint use of armed forces by the United States and other states whose diplomatic representatives were threatened by the siege of the Legation Quarter in Peking, may be considered as collective measures.[7]

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[2] 16 Wallace 36, at p. 79.

[3] *Perrin* v. *U.S.* (1868), 4 Ct. Cls. 543; *In re Neagle* (1890) 135 U.S. 1.

[4] Clark, J. Reuben. Right to Protect Citizens in Foreign Countries by Landing Forces (2d. Rev. Ed.), Washington, U.S. Government Printing Office, 1929.

[5] (1860) 4 Blatch. 451, at p. 454.

[6] See Rogers, J. G., World Policing and the Constitution. Boston, World Peace Foundation, 1945, pp. 58–61; Elihu Root, Military and Colonial Policy of the United States 1916, pp. 333, 336–347; message of President McKinley in Foreign Relations, 1900, p. xiv.

[7] Philip C. Jessup has characterized such action as "a measure of forcible self-help, legalized by international law because there has been no international organization competent to act in an emergency," See Force Under a Modern Law of Nations, 24 Foreign Affairs, (1946), p. 98.

Most of the United States action has occurred with the greatest frequency in Latin America, especially during revolutions. United States armed forces have also been used in the South Sea Islands, Africa, in the Near and Far East.[8]

As to the President's power to send troops overseas to safeguard American interests, Edwin Borchard, late professor at Yale University, observed that:

Inasmuch as the Constitution vests in Congress authority "to declare war" and does not empower Congress to direct the President to perform his constitutional duties of protecting American citizens on foreign soil, it is believed that the Executive has unlimited authority to use the armed forces of the United States for protective purposes abroad in any manner and on any occasion he considers expedient.[9]

As regards the President's power to use the forces of the United States for the protection of American lives and property on foreign soil, J. Reuben Clark laid down the following proposition:

1. The use of the forces of the United States in foreign countries to protect the lives and property of American citizens resident in that country does not constitute an act of war, and is, therefore, not equivalent to a declaration of war.

2. Inasmuch as the use in foreign countries of the military forces of this government for the purpose of protecting American life and property therein situated does not amount to an act of war or to a declaration of war, it is doubtful if Congress has authority to control such use.[10]

A recent prominent example of the President's employment of the armed forces which was justified on the grounds that it would protect lives and property occurred during the Dominican uprising in 1965. According to President Johnson, he ordered the intervention "because the lives of Americans remaining in the Dominican Republic were in danger and the Dominican government had informed the United States it could no longer provide for their safety." [11] In addition, the action might have been prompted to avoid a Communist takeover of the revolutionary forces, a motive which was indicated in President Johnson's TV address to the nation on May 2, 1965.

B. DEFENSE AGAINST INVASION OR THREATS TO NATIONAL SAFETY

On several occasions Presidents of the United States have acted to repel actual or threatened invasion of the United States or threats to national safety. In 1793, President Washington, acting entirely on his own initiative, directed General Wayne to drive out of the Northwest Territory any British troops which might be found stationed there. In 1816, 1817, and 1818, under presidential orders, American forces invaded Florida to suppress English marauders, freebooters, and Indian tribes who were raiding American settlements.[12] In 1846, President Polk directed General Taylor not only to repel any Mexican invasion of disputed territory, but to follow the invaders into Mexican territory until they were defeated. It was only after two battles had been fought that Congress declared that—

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[8] 2 Moore, Digest of International Law, pp. 400–402, 414–418.
[9] Diplomatic Protection of Citizens Abroad, New York, 1916, p. 452.
[10] Clark, J. Reuben, *op. cit.*, pp. 39–40.
[11] New York Times, April 30, 1965.
[12] Clark, J. Reuben, *op. cit.*, p. 52; Bemis, S. F. A Diplomatic History of the United States (3d Ed.), New York, 1950, p. 190; Bailey, T. A. A Diplomatic History of the American People (2d Ed.), New York, 1942, pp. 168–172; Berdahl, C. A. War Powers of the Executive in The United States, Urbana, 1921, pp. 132–133; Upton, E. The Military Policy of the United States (3d Imp.), Washington, 1912, pp. 147–149.

by act of the Republic of Mexico, a state of war exists * * * [13]

In 1916 President Wilson sent troops into Mexico under command of General Pershing to apprehend the bandit leader, Villa, who had been raiding border towns. The expeditionary force remained in Mexico for 8 months. Congressional approval was obtained by President Wilson, after Pershing's troops had crossed the border.[14]

In *Martin* v. *Mott* the Supreme Court concluded that the President was empowered to act not only in cases of actual invasion, but also when there was "imminent danger of invasion"; and "imminent danger" was held to be a question of fact to be determined by the President. Mott, a citizen of New York, was contesting a sentence imposed by a court martial for failure to answer a militia call during the War of 1812. An act of Congress in 1795 provided that—

> Whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the State or States most convenient to the place of danger or scene of action, as he may judge necessary to repel such invasion and issue his order for that purpose * * * [15]

Mr. Justice Story said:

> The power thus confided by Congress to the President, is doubtless, of a very high and delicate nature. * * * But it is not a power which can be executed without a correspondent responsibility. It is, in its terms, a limited power, confined to cases of actual invasion, or of imminent danger of invasion. If it be a limited power, the question arises, by whom is the exigency to be judged of and decided? * * * We are all of opinion, that the authority to decide whether the exigency has arisen belongs exclusively to the President, and that his decision is conclusive upon all other persons. We think that this construction necessarily results from the nature of the power itself, and from the manifest object contemplated by the act of Congress. The power itself is to be exercised upon sudden emergencies, upon great occasions of state, and under circumstances which may be vital to the existence of the Union.[16]

President Lincoln's conduct at the beginning of the Civil War represents perhaps the widest use of unilateral Presidential power without prior congressional sanction. However, his action was against internal rebellion and was not a military defense against a foreign power. It was nearly 3 months after the fall of Fort Sumter before President Lincoln convened the Congress in special session on July 4, 1861. In the 10 week interim, he declared a blockade of the Southern States, organized the available State militias into a 90-day volunteer force, called 40,000 volunteers for 3 years' service, added 23,000 men to the Regular Army, and 18,000 to the Navy, used $2,000,000 from unappropriated funds in the Treasury to pay persons unauthorized to receive it, and took other action severely restricting civil rights. Most of this was done without any statutory authorization. The Congress later approved these actions. E. S. Corwin pointed out that Lincoln did this by joining the Presidential powers as Commander in Chief to those deriving from his duty to execute the laws and—

> From these two clauses thus united Lincoln proceeded to derive what he termed the "war powers" to justify the series of extraordinary measures. * * * [17]

The exercise of these powers was thoroughly considered by the Supreme Court in *The Prize Cases*. The Court stated that the exist-

[13] 9 Stat. 9; Bemis, S. F. *op. cit.* pp. 239–240.
[14] [illegible] in Mexican Relations, New York [illegible], 2 Hack- [illegible]
[15] 1 Stat. 424.
[16] (1827) 12 Wheat. 19, at p. 28.
[17] Corwin, Edward S., *op. cit.*, p. 229.

ence of war is a question of fact and that the President must meet the danger—

In the shape that is presented itself, without waiting for Congress to baptize it with a name * * * he must determine what degree of force the crisis demands. * * * If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less a war, although the declaration of it be unilateral.[18]

It should be repeated, however, that Lincoln's actions related to a civil war and not to a foreign war. How far is the exercise of wide presidential authority in a civil war applicable to a foreign war? So far as domestic measures are concerned, E. S. Corwin observed that—

An indefinite power must be attributed to the President to take emergency measures, even though Congress is thus confronted with irremediable *faits accomplis* and a permanent set given to policy touching matters of vital importance to the nation.[19]

C. PROTECTION OF THE NATIONAL INTERESTS OF THE UNITED STATES AND SUPPORT OF UNITED STATES FOREIGN POLICY

The President has also sent troops into conflicts for the more general purposes of protection of the national interest of the United States and in support of its foreign policy. Sometimes the national interest has been interpreted in broad terms; at other times the interpretation has been restrictive. Sometimes the foreign policy which troops are dispatched to defend has been embodied in a treaty. At other times, a formal treaty commitment has been lacking.

The extent to which the President can use armed forces to further or protect the foreign policy of the United States has been commented on by Quincy Wright, professor emeritus at the University of Chicago and the University of Virginia, as follows:

National territory, persons, ships, and official agencies are tangible things and there can be no question of the President's right and duty to use the armed forces to protect them when actually attacked or in immediate danger. A more difficult problem arises when more remote danger or intangible policies are the object of attack. Can the President announce in behalf of the United States such policies as the Monroe Doctrine; the Open Door in, and the territorial integrity of, China; the police power corollary of the Monroe Doctrine; the Good-Neighbor policy and United Nations solidarity against aggression, deemed to be in the interest of American defense and prosperity, and use the armed forces to maintain them? The announcement of such policies has often carried the implication that forces would be used if necessary. It would appear doubtful, however, whether the President can justify such uses of force without further authorization of law than can be found in any broad terms of the Constitution. If such policies have the object of maintaining general international law, however, the President may justify action on the ground that international law is part of the law of the land.[20]

The President has on several occasions deployed troops abroad in defense of certain standards of international order, the maintenance of which has been deemed to be in the U.S. national interest. Thus the U.S. in the nineteenth century joined other nations in extensive armed action against the Barbary States, Japan, Korea, Samoa and China to require them to meet accepted standards of international

[18] (1863) 2 Bl. 635, at p. 668.
[19] Corwin, Edward S., *op. cit.*, p. 234.
[20] Power of the President to Commit the United States to Participation in Military Sanctions, 38 American Journal of International Law (1944) at p. 682.

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behavior. It took similar measures on its own against Mexico, Haiti, the Dominican Republic, and Nicaragua, to protect American interests and also to exact payment of financial obligations on behalf of foreign creditors.

Although the President's power to send troops abroad to protect the national interest was at first interpreted narrowly and appeared almost synonymous with his power to protect American lives and property abroad, that definition was gradually broadened so that "By the end of the nineteenth century the capacity of the Executive to protect apparently without distinction the great variety of such interests, whether evidenced by statutes, treaties, international law, or broad foreign policy aims, was well documented." [21]

In the past three decades there have been a number of occasions when the President has independently deployed troops or taken other actions in the defense of our interests or foreign policy aims as he has seen them. President Franklin Roosevelt's destroyers for bases deal, as well as the numerous troop dispositions undertaken at his direction in the years immediately preceding U.S. entry into World War II, fall into this category.

Perhaps the most striking action undertaken by the Executive on his own initiative to defend a foreign policy goal of the U.S. was President Truman's decision to commit U.S. troops to repel the invasion of South Korea, a decision for which congressional approval was never sought.

In defending the President's action, the State Department argued that it had been taken under the United Nations Charter, which is part of both the treaty and international law that the President carries out, and to protect United States interests. According to a memorandum of July 3, 1950, prepared by the Department of State:

> The President, as Commander in Chief of the Armed Forces of the United States, has full control over the use thereof. He also has authority to conduct the foreign relations of the United States. Since the beginning of United States history, he has upon numerous occasions utilized these powers in sending armed forces abroad. The preservation of the United Nations for the maintenance of peace is a cardinal interest of the United States. Both traditional international law and article 39 of the United Nations Charter and the resolution pursuant thereto authorize the United States to repel the armed aggression against the Republic of Korea. * * *
>
> The continued defiance of the United Nations by the North Korean authorities would have meant that the United Nations would have ceased to exist as a serious instrumentality for the maintenance of international peace. The continued existence of the United Nations as an effective international organization is a paramount United States interest. The defiance of the United Nations is in clear violation of the Charter of the United Nations and of the resolutions adopted by the Security Council of the United Nations to bring about a settlement of the problem. It is a threat to international peace and security, a threat to the peace and security of the United States and to the security of United States forces in the Pacific.
>
> These interests of the United States are interests which the President as Commander in Chief can protect by the employment of the Armed Forces of the United States without a declaration of war.[22]

While there was considerable debate in Congress on the legality of the President's action, the issue became blurred because the action was taken under the auspices of the United Nations.

[21] Harvard Law Review *op. cit.*, p. 1777.
[22] Authority of the President to Repel the Attack in Korea. Department of State Memorandum of July 3, 1950. Department of State Bulletin v. 23, July 31, 1950. pp. 173, 176–177.

Some find significance in the fact that the administration avoided the use of the word "war" to describe hostilities in Korea, referring to it instead as a "police action":

Attempts were made to justify the decision on the grounds, *inter alia*, that the action was taken under the United Nations Charter, a part of both the treaty and international law which the President is constitutionally empowered to execute, and that the President was protecting "the broad interests of American foreign policy." Significantly, though, constant attempts were made by the administration to describe the conflict, not as a "war," but as a mere "police action," suggesting that, indeed, the President's power to use force to protect such interests was somehow limited to military measures short of war.[23]

D. STATIONING OF UNITED STATES FORCES ABROAD IN TIME OF PEACE

In addition to sending troops abroad in times of hostilities, the President has also stationed forces abroad in time of peace and in the absence of any fighting. The period since the close of World War II furnishes numerous examples of the sending of U.S. troops overseas.[24] However, the years immediately preceding the Second World War also afford three examples of the dispatch of forces to foreign territory in time of peace for strategic reasons. All of them occurred before the United States became a belligerent.

The first instance was the occupation by U.S. troops of the naval and air bases acquired from Britain in exchange for 50 destroyers. The bases were acquired through an executive agreement that was not submitted to the Senate for approval. The exchange was effected between the Governments and, on September 3, 1940, the President informed Congress of the action taken.

The war in Europe had left Greenland in an uncertain status after Germany invaded Denmark. The strategic position of the island made it important to both Great Britain and Germany. On April 10, 1941, the Secretary of State announced the text of an agreement signed by himself and the Danish Minister the day before. It was announced that Greenland would be occupied by American troops.

Iceland, an independent sovereign State, had been occupied by British troops. Through an exchange of letters, sometime in June 1941, President Roosevelt and the Prime Minister of Iceland, apparently arranged for American troops to replace British troops. The landing of U.S. troops was reported to Congress by the President in a special message on July 7, 1941, the same day our forces landed. The President transmitted the documents to Congress "for information" and did not request any action.

Among postwar experiences involving U.S. troops abroad in time of peace, the question of sending additional troops to Europe in early 1951 was clearly a landmark case. The "Great Debate" over troops to Europe grew up gradually after President Truman's announcement in September 1950 that he planned to send additional ground troops to Europe as part of the projected buildup of NATO forces there. Senator Taft's speech attacking the Administration for formulating foreign policy without consulting the Congress or the people, delivered in the Senate on January 5, 1951, marked the beginning of a Senate preoccupation with the issue which lasted through the adoption of

[23] Harvard Law Review, *op. cit.*, p. 1792.
[24] In Appendix I-B are listed major U.S. armed actions overseas, other than declared wars, together with related actions by the Congress.

S. Res. 99 three months later.[25] This resolution, adopted April 4, 1951, expressed approval of "present plans to send four additional divisions of ground forces to Western Europe," but stated it was the sense of the Senate "that no ground troops in addition to such four divisions should be sent to Western Europe * * * without further congressional approval." The resolution also expressed support of General Eisenhower's appointment as NATO commander, the sense of the Senate regarding future military contributions by Italy, Germany and Spain, and the sense of the Senate on a number of consulting and reporting procedures involving the President, the Joint Chiefs of Staff, the NATO Commander and the Congress.

Since the Troops-to-Europe resolution was adopted, the President has not raised the issue of further ground troops for Europe beyond the additional four divisions specified. There has thus been no direct test of whether the "further Congressional approval" specified in the resolution would in fact have been sought. The "Great Debate" seems to have resulted in something of a draw between the President and the Congress—an occurrence itself which was unusual in a long period of generally declining congressional power on the issue vis-a-vis the President.

The sending of troops abroad in the absence of hostilities poses somewhat different issues than the sending of troops into a conflict.

One school of opinion, over the years, has held that the President as Commander in Chief, and perhaps with certain inherent and "necessary and proper" powers, can station armed forces overseas in peacetime as he sees fit, without the need to obtain congressional authorization.

Writing in 1929, W. W. Willoughby, professor at Johns Hopkins University, asserted that the President had exclusive discretion to send forces outside the country in time of peace, although he cited Elihu Root as a contrary authority:

> There has been no question as to the constitutional power of the President of the United States, in time of war, to send troops outside of the United States when the military exigencies of the war so require. This he can do as Commander in Chief of the Army and Navy, and his discretion in this respect can probably not be controlled or limited by Congress.
>
> As to his constitutional power to send United States troops outside the country in time of peace, when this is deemed by him necessary or expedient as a means of preserving or advancing the foreign interests or relations of the United States, there would seem to be equally little doubt, although it has been contended by some that the exercise of this discretion can be limited by congressional statute. That Congress has this right to limit or to forbid the sending of United States forces outside of the country in time of peace has been asserted by so eminent an authority, as Ex-Secretary Root. It would seem to the author, however, that the President, under his powers as Commander in Chief of the Army and Navy, and his general control of the foreign relations of the United States, has this discretionary right constitutionally vested in him, and, therefore, not subject to congressional control. Especially, since the argument of the court in *Myers* v. *United States* (272 U.S. 52), with reference to the general character of the executive power vested in the President, and, apparently, the authority impliedly vested in him by reason of his obligation to take care that the laws be faithfully executed, it is reasonable to predict that, should the question be presented to it, the Supreme Court will so hold. Of course, if this sending is in pursuance of express provisions of a treaty, or for the execution of treaty provisions, the sending could not reasonably be subject to constitutional objection.[26]

Forty years later, in 1969, the Department of State expressed a similar view of presidential prerogative:

[25] The text of S. Res. 99 is included in Appendix IV.
[26] The Constitutional Law of the United States (2d ed.) New York, 1929, vol. III, p. 1567.

As Commander in Chief, the President has the sole authority to command our Armed Forces, whether they are within or outside the United States. And, although reasonable men may differ as to the circumstances in which he should do so, the President has the constitutional power to send U.S. military forces abroad without specific congressional approval.[27]

Others assert that congressional approval is necessary for sending troops to foreign countries under certain circumstances. One such circumstance cited is where there is a danger of war. Sending troops overseas in such a case, it is sometimes held, would be unconstitutional because only the Congress has the power, under the Constitution, to declare war. Similar circumstances requiring Congressional approval in the views of some, include cases when the troops might be employed provocatively or offensively.

In response to a query made by a Member of the Congresss on June 3, 1940, on whether the President of the United States had the authority under existing law to order Federal troops into service outside of the possessions of the United States, the Judge Advocate General of the Army stated:

He (the President) may not raise armies. This the Congress is responsible for doing (Constitution, art. I, sec. VIII, clause 12). Once raised, an army of the United States is under the sole and exclusive direction of the President. Their movement and implementation is at the President's discretion, limited only by whether or not an intended use would constitute an initiation or declaration of war by the President, if carried through.[28]

It would appear from this memorandum that the President could not move troops if the purpose in so doing was to initiate or declare a war.

Edwin L. Borchard, writing in 1945, maintained that congressional consent was required if war was a possibility:

His action in landing troops for the protection of American citizens * * * is limited to small, backward, or weak countries, where the American citizen or his property is in immediate danger or where the intervention is assented to, where small forces are involved, and where the activity could not possibly lead to war. If the President even faintly suspects that intervention might lead to war, it is his duty, as President Wilson undertook in the Vera Cruz expedition of 1914 against Mexico, to obtain the consent of Congress for his proposed enterprise * * *.[29]

The report of the Senate Foreign Relations Committee on the "National Commitments" resolution in April, 1969, referring to the "50,000 American troops now in Thailand," stated:

* * * the dispatch of large numbers of American troops to an area of warfare or potential warfare is also a matter requiring congressional authorization, involving, as it does, both the treaty power and the war powers of Congress.[30]

V. Limitations on the President's Use of Troops Abroad

A. Declaration of War

The framers of the Constitution intended to vest in Congress the sole power to declare war.[1] The President's power to order military

[27] Comments on Senate Resolution 85 (the "National Commitments" resolution). Memorandum accompanying letter of March 10, 1969, from William B. Macomber, Jr., Assistant Secretary of State for Congressional Relations, *quoted in* National Commitments Report, *op. cit.* p. 35.
[28] Memorandum to the Adjutant General, June 17, 1940.
[29] The Charter and the Constitution, 39 American Journal of International Law (1945) 767, at pp. 768–769.
[30] Senate Report No. 91-129, *op. cit.*, p. 28.
[1] The Supreme Court has noted that "the whole powers of war [are] by the constitution of the United States, vested in congress." *Talbot* v. *Seeman* (1801) 1 Cr. 28, at p. 28.

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action prior to consultation of Congress was allowed for only in one specific situation, namely, to repel sudden attacks on the United States. However, armed conflict between nations without a declaration of war is becoming more commonplace, and recent practice indicates that a formal declaration of war is no longer necessarily issued, even by nations engaging in extended hostilities. The *Harvard Law Review* states:

> Though there may have been a time when . . . changes in legal status were uniquely the result of a formal declaration [of war] this is clearly no longer true today. Countries have long engaged in undeclared hostilities which in terms of the effort involved, the impact on citizens, and the effect on domestic and international legal relations are often indistinguishable from a formally declared war. . . . the formal declaration of war in the modern context is often deliberately avoided precisely because of the apparent commitment to total victory and the general hardening of attitudes likely to result.[2]

The international implications of declaring or not declaring war in time of hostilities do not constitute the key issue in this study. The main question is the division of the war power between Congress and the President. How significant a limitation on the President's power has been the requirement for a declaration of war by Congress in the past?

The precedents show that Congress has never refused to declare war when requested by the President and also that several major military actions have been undertaken without such a declaration. Prior to the conflict in Vietnam, five out of ten serious and extended engagements of force against other nations were conducted by the United States without a formal declaration of war. Those engagements which took place without any congressional declaration are: the undeclared naval war with France, 1798–1800; the First Barbary War, 1801–05; the Second Barbary War, 1815; the American-Mexican hostilities, 1914–17; and the Korean War, 1950–53. Those conflicts in which war was declared are: The War of 1812; the Mexican War; the Spanish-American War; and the First and Second World Wars.[3]

Although Congress has "declared war" in the sense that a formal resolution has been enacted, four of the five "declarations" have recognized the prior existence of war. The only exception was the War of 1812. The declaration of war in 1812 provided that—

> War be and the same is hereby declared to exist.[4]

The others either recognized the existence of war by the act of some other State, as in the Mexican War and the First and Second World Wars, or recognized the existence of war as of some previous date, as in the Spanish-American War. The declaration of war against Mexico of May 13, 1846, provided that—

> whereas, by act of the Republic of Mexico, a state of war exists * * *.[5]

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[2] Harvard Law Review, *op. cit.* p. 1772. The only formal declarations of war made by any nation since World War II appear to be those issued against Israel by Algeria, Iraq, Kuwait, Sudan and Syria on June 5, 1967.

[3] See Appendix I. Rogers, J. G. *op. cit.* p. 45 ff.

[4] 2 Stat. 755.

[5] 9 Stat. 9. The declaration of war of April 6, 1917, provided "that the state of war between the United States and the Imperial German Government which has been thrust upon the United States is hereby formally declared." (40 Stat. 1). The declaration of December 8, 1941, provided: "Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government and the people of the United States of America: Therefore be it resolved * * * that the state of war between the United States and the Imperial Government of Japan which has been thrust upon the United States is hereby formally declared * * *" (55 Stat. 795). The declaration of war of December 11, 1941, against Germany provided: "Whereas the Government of Germany has formally declared war against the Government of and people of the United States of America: Therefore has it resolved * * * that the state of war between the United States and Germany which has been thrust upon the United States is hereby formally declared (55 Stat. 796). The declaration of war against Italy of December 11, 1941, followed the same form as that against Germany (55 Stat. 797).

In the case of the Spanish-American War, the declaration of April 25, 1898 provided—

* * * that war be, and the same is hereby declared to exist, and that war has existed since the twenty-first day of April * * * between the United States of America and the Kingdom of Spain * * *.[6]

Several significant court cases make the point that a state of war can exist without a formal declaration of war by the Congress. The first is *Hamilton v. McClaughry*, arising out of American participation in quelling the Boxer uprising. A corporal, tried and convicted by a United States court martial in Peking, contended that at the time of the homicide of which he was convicted, there prevailed neither war, insurrection, nor rebellion, and that the military court which had tried him was without jurisdiction and its judgment void. The court said:

Again, it is the well-settled law that the existence of a condition of war must be determined by the political department of the Government; that the courts take judicial notice of such determination and are bound thereby. * * * In the present case, at no time was there any formal declaration of war by the political department of this Government against either the Government of China or the "Boxer" element of that Government. A formal declaration of war, however, is unnecessary to constitute a condition of war. * * * The question here is whether this Government was, at the time of the commission of a homicide by petitioner, prosecuting its right in Chinese territory by force of arms. * * * The first duty of a state is the protection of the lives and property of its citizens wherever lawfully situated, by peaceable means if possible; if not, by force of arms. More especially must this protection be afforded the representatives of this Government in a foreign country.[7]

Another is the case of *New York Life Insurance Company v. Bennion*, arising out of the attack on Pearl Harbor. Mrs. Bennion brought action against the New York Life Insurance Co. for double indemnity payment on the policy held by her husband. Captain Bennion, commanding officer of the *U.S.S. West Virginia*, was killed on the bridge of his ship on December 7, 1941, during the attack on Pearl Harbor. The insurance policy provided double indemnity for accidental death, but not for death resulting from "war or any act incident thereto." The problem was whether the existence of war is dependent upon a formal declaration by the Congress.

The Court said:

No one denies the grim reality that the attack beginning December 7, 1941, at about 7:30 a.m. Honolulu time, marked the commencement of an armed conflict between two sovereign nations which ended only when the Japanese surrendered nearly 4 years later. Furthermore, it seems to be agreed that the existence or nonexistence of a state of war is a political question, to be determined by the political department of our Government. The basic difference lies in the contention on the one hand that a formal declaration by the Congress, which alone has the constitutional power to declare and make war, is an essential prerequisite to judicial cognizance of its existence; and the contention on the other hand, that the existence of a war is not dependent upon its formal declaration but rather is determinable from an appraisal of actualities; that the formal declaration by Congress on the day after the attack was merely a formal recognition of that which was already actually in existence.

[6] 30 Stat. 364.
[7] (1905) 136 Fed. 445, at pp. 449–450.

When one sovereign nation attacks another with premeditated and deliberate intent to wage war against it, and that nation resists the attacks with all the force at its command, we have war in the grim sense of reality. It is war in the only sense that men know and understand it. Mankind goes no further in his definitive search—he does not stand on ceremony or wait for technical niceties.

Let us suppose that Congress was not in session on December 7th when the Japanese attacked, and could not convene for 30 days, therefore could not and did not formally declare or recognize a state of war until January 8, 1942. Meanwhile, the President, acting in his capacity as Commander and Chief of the Armed Forces, took all available measures, not only to repel the invasion, but waged, as we did, an offensive war at Midway and throughout the Pacific. And let us suppose that the insured here had been killed on January 7, 1942, in one of the many sea battles which raged over the Pacific immediately after the Pearl Harbor attack. In these circumstances it cannot be denied that the acts and conduct of the President, acting in furtherance of his constitutional authority and duty, would constitute a political determination of a state of war of which the courts would take judicial notice. We can discern no demonstrable difference in the supposition and the actual facts, and we therefore conclude that the formal declaration by the Congress on December 8th was not an essential prerequisite to a political determination of the existence of a state of war commencing with the attack on Pearl Harbor.[8]

In the case of *Youngstown Sheet and Tube Co. v. Sawyer*,[9] in which it was decided by the Supreme Court that the President did not have the authority to seize steel mills on the basis of his role as Commander in Chief, during the Korean conflict, Mr. Justice Jackson in his concurring opinion, recognized that "a state of war may in fact exist without a formal declaration."

Thus, while certain judicial decisions have deemed that a state of war can exist without a formal declaration of war, there has not been an attempt to apply this judgment to the respective war powers of the President or the Congress. In the instances cited, the determination of the existence of a state of war depended on the context. The *Harvard Law Review* article points out that a precise definition of the term "war" is not feasible:

Despite occasional judicial attempts to discover a unique, general legal definition applicable in all contexts, it seems clear that no verbal formula can identify one class of armed hostilities as properly subject to rules and considerations wholly different from those applicable to other classes. At best "war" will assume different meanings depending on the context which prompts the investigation, whether it be the interpretation of a contract, a life insurance policy, a statute, or a constitution.

Moreover in April 1970, the U.S. Court of Military Appeals decided that the conflict in Vietnam was not to be considered "time of war" for the purposes of Article 2 (10) of the Uniform Code of Military Justice. In this instance, a civilian had been tried by a military court on the grounds that the offense of attempting to steal 36,000 government-owned batteries in Vietnam had been committed in "time of war." In a column in the *Washington Post*, Merlo Pusey cites the reasoning of Judge Darden for the Court's reversal of the conviction:

We emphasize our awareness that the fighting in Vietnam qualifies as war as that word is generally used and understood. By almost any standard of comparison—the number of persons involved, the level of casualties, the ferocity of the combat, the extent of the suffering, and the impact on our nation, the Vietnamese armed conflict is a major military action. But such a recognition should not serve as a shortcut for a formal declaration of war, at least in the sensitive area of subjecting civilians to military jurisdiction.

[8] (1946) 158 F. 2d 260, pp. 262, 264.
[9] 72 S. Ct. 863. (1952).

Pusey notes:

The judiciary is saying that if Congress wishes to have civilians accompanying our armed forces abroad tried in military courts in time of war, it will have to authorize the war with a clear-cut declaration. . . . One must remember, of course, that the courts have not said that it is constitutional to conduct major wars in distant lands without authorization from Congress.[10]

Furthermore, by enacting legislation which authorizes certain activities in time of "national emergency," Congress itself has enabled the President to take action which would have been possible only under a declaration of war.

According to a publication by the Executive Office of the President:

Many statutes provide that the powers they confer may be exercised during a national emergency proclaimed by the President.

By Proclamation No. 2914 of December 16, 1950, President Truman proclaimed the existence of a national emergency. He affirmed the continued existence of that national emergency by Proclamation No. 2974 of April 28, 1952. President Eisenhower (Executive Order Nos. 10896 and 10905), President Kennedy (Executive Order No. 11037), and President Johnson (Executive Order No. 11387) expressly recognized the continuance of that national emergency. No action has been taken by the President or the Congress to terminate that national emergency.

Consequently, the powers provided by those statutes may be exercised whenever there is a need for such exercise.

* * * Certain statutes provide that the powers they confer may be exercised in a national emergency proclaimed by the President on a date subsequent to December 16, 1950. These powers are not available for exercise on the basis of the national emergency proclaimed by Proclamation No. 2914 of December 14, 1950.[11]

The majority of these statutes affect the President's powers over domestic affairs. One statute in particluar affects the President's use of troops abroad because it deals with the number of reserves which may be called up. This aspect is discussed below in the section on the militia clause and the use of reserve components.

B. THE MILITIA CLAUSE AND USE OF THE RESERVE COMPONENTS

A second limitation which the Constitution places on the President which could affect the number of troops sent abroad concerns the calling up of reserve forces, under the militia clauses of the Constitution.

1. *Use of the Militia Outside the United States.*—Article II, Section 2, of the Constitution makes the President Commander in Chief of the militia only "when called into the actual service of the United States." The militia now consists of the Army National Guard and the Air National Guard. The President cannot order the militia into service upon his own authority as Commander in Chief.

Article I, Section 8, of the Constitution vests in Congress the power "to provide for calling forth the militia." Congress, in various acts, has given the President definite authority to call the militia under certain circumstances; but his power derives from legislatively exercised power and not from Presidential power under the Constitution.

Prior to the National Defense Act of 1916, the President was limited in the purposes for which he could use the militia, even when properly under his command. According to Article I, Section 8, of the Constitution, Congress could provide for calling forth the militia

[10] Washington Post, April 16, 1970, p. A20.

[11] Guide to Emergency Powers Conferred by Laws in Effect on January 1, 1969. Office of Emergency Preparedness. Executive Office of the President. p. ii.

[illegible]

the contention that the incorporation of the National Guard into the Regular forces limited the uses to which such a national army might be used. The fallacy of the argument results from confounding the constitutional provisions concerning the militia with that conferring upon Congress the power to raise armies. It treats them as one while they are different.[19]

In *Cox* v. *Wood*, it was argued that although Congress had power to call citizens to compulsory service in virtue of the militia clause, that power was limited to the purposes of the militia clause, and that the draft was illegal because it was made under an act avowedly for the purpose of military duty in a foreign country. The Supreme Court reaffirmed the *Selective Draft Cases*, and rejected the argument, saying:

> * * * the constitutional power of Congress to compel military service . . . was based on the following propositions: "(a) That the power of Congress to compel military service and the duty of the citizen to render it when called for were derived from the authority given to Congress by the Constitution to declare war and to raise armies. (b) That those powers were not qualified or restricted by the provisions of the militia clause, and hence the authority in the exercise of the war power to raise armies and use them when raised was not subject to limitations as to the use of the militia, if any, deduced from the militia clause." [20]

2. *Use of Reserve Components.*—At the present time, the basic policy for ordering the reserve components into Federal Service is that "whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces," the reserve components (or such part of them as may be needed) "shall be ordered to active duty and retained as long as so needed." [21] In time of war or national emergency declared by Congress (or when otherwise authorized by law) any reserve unit or member of the ready reserve may be ordered to duty for duration of the war or emergency and for six months thereafter.[22] In time of national emergency declared by the President after January 1, 1953 (or when otherwise authorized by law), any reserve unit or member of the ready reserve may be ordered to active duty for not more than 24 consecutive months; however, not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, at any one time.[23]

In sum, the President is legally empowered at the present time to call reserve forces to active duty, to a number not exceeding one million men, by declaring a new national emergency.[24] Prior authorizations, as employed in the call-ups for Berlin in 1961, Cuba in 1962, and Vietnam in 1968, have lapsed.[25] The authority of the Commander in Chief over the reserve components called to active federal service is indentical to his command authority over the regular forces. However, no member of an armed force may be assigned to active duty on land outside the United States and its territories and possessions until he has had four months of basic training or its equivalent.[26]

[19] (1918) 245 U.S. 366, at p. 381.
[20] (1918) 247 U.S. 3, at p. 6.
[21] Title 10, U.S.C., section 263.
[22] *Ibid.*, section 672.
[23] *Ibid.*, section 673.
[24] This power is distinct from his authority to call the National Guard, as he considers necessary to repel an invasion, suppress a rebellion against the Government of the United States, or execute the laws of the United States. U.S.C., Title 10, section 3500.
[25] For Berlin, P.L. 87-117, August 1, 1961, 75 Stat. 242. For Cuba, P.L. 87-736, October 3, 1962, 76 Stat. 710. For Vietnam, P.L. 89-687, October 15, 1966, 80 Stat. 981, and P.L. 90-500, September 20, 1968, 82 Stat. 850.
[26] U.S.C. Title 10, section 671.

C. LIMITATIONS BY CONGRESS

Under the Constitution, Congress possesses a variety of powers which can be used to limit the President's ability to deploy U.S. forces overseas and to commit them to combat. The late Professor Edward S. Corwin expressed the potentially overwhelming power of the Congress in these terms:

The point is that the sort of foreign policy which present-day conditions require can never be kept going by attributing to the President, as in the past, the simple power to order the Navy around without consulting Congress. Far otherwise: Congress must be constantly asked to exercise powers which no President has ever ventured to exercise on any scale—the power to tax, to pledge the credit of the United States, to raise armies, to regulate commerce, and so forth and so forth. And if Congress cannot be persuaded to back Presidential policy by bringing these powers to its support, then—the idea of a Presidential *coup d'état* being dismissed—the policy fails, and that is all there is to it.[27]

W. Taylor Reveley III, writing in 1969, summarized a large number of potential Congressional restraints on the President:

* * * In Richard Neustadt's words, we have "a government of separated institutions sharing powers." Thus, virtually all presidential programs and ventures require implementing legislation and funding. Unlike parliamentary executives, the President has no ultimate weapons, such as dissolution or ex-communication from party ranks, with which to beat reluctant legislators into submission. As a result, an abiding concern of the Executive and his assistants is the likely reaction of Congress to their proposals and actions.

Legislators have a number of tools with which to restrain the President. Through legislation, they can restrict his options, hamstring his policies and, to an extent, even take the policy initiative from him. It has been suggested that Congress is presently attempting to control the Executive by qualified legislation more than in the past, and the movement headed by Senator Fulbright, if successful, would certainly reduce presidential freedom in foreign affairs. Through the power of the purse, the legislators can similarly limit the President. Although control of the purse has been virtually a nonpower in the hands of cold war Congresses when funds were sought for the military, present reluctance to embark on major defense spending and criticism of the military establishment suggest that appropriations may engage anew as a limiting factor. A few voices have even been heard to suggest that funds supporting troops in the field be cut—traditionally, an unthinkable position.

The power of congressional committees to investigate and oversee, as the 1967 Fulbright hearings indicate, provides a means of sparking national debate, molding opinion and thereby influencing presidential action. Activity within Congress can frequently focus outside political pressure and bring it to bear on the Chief Executive. Similarly, legislators can work the political process privately as well, communicating quietly with the President to persuade him that his ideas are ill-advised or subject to great potential opposition. Congress can also work in tandem with rebellious elements in the bureaucracy to thwart presidential initiatives. Remote though the possibility is, the President must remain aware of the congressional capacity to impeach him or to censure his conduct by resolution—a fate that befell Polk at the hands of a House disturbed by his role in initiating the Mexican War. The President is also continually hemmed in by the play of the political system—by sniping from members of the opposition party and by the demands and feelings of members of his own party.

Finally, the Senate is constitutionally empowered to advise and consent to presidential treaties and appointments and has devised the power to delay and negate by filibuster. These senatorial prerogatives, coupled with the power of Congress over the legislation and appropriations necessary to implement the President's foreign policies, constitute the primary restraints on his action.[28]

Other specific Congressional acts which can limit the President, some of them covered generally in the foregoing quotation, include the

[27] Corwin, Edward S., *op. cit.*, p. 222.
[28] Reveley, W. Taylor III, *op. cit.*, pp. 1774–1776. Footnotes omitted.

termination of war, as the Congress did by joint resolution after World War I; the termination of a state of national emergency; the refusal to confirm both civilian and military appointments; the establishment of manpower ceilings for the armed forces; the prohibition of military service by draftees outside of certain areas; the enactment of neutrality legislation; and the restriction of various types of legislation associated with possible military involvement overseas, such as bilateral military and economic aid and military sales and credit programs.

Congress has the exclusive power under the Constitution to appropriate funds. It has the specific power to raise and support armies and to provide and maintain a navy. The withholding of appropriations as a limitation on the President is suggested in the preceding quotation by Reveley. Professor Corwin wrote that "Congress may effectively block Presidential policy by simply declining to pass implementing legislation—appropriations for instance."[29]

Professor Corwin has also discussed limitations on the President through the Congressional role in military appointments, as follows:

> There is one power of supreme military command the President curiously lacks—that of choosing his subordinates. Not only does Congress determine the grades to which appointments may be made and lay down the qualifications of appointees, but it has always been assumed that the Senate shares the appointing power in the case of military as well as civil officers. Without doubt, Congress could transfer the power to "the President alone," but it has never done so.[30]

Except for Lincoln's actions, Presidents have used only the forces available to them.[31] The President's power is restricted to these forces, and Congress can refuse to "raise and support" additional forces for purposes it does not approve. In time of war, however, the situation has been different, and Congress has usually afforded the President broad powers. Corwin observed on this point in 1948 that:

> Actually, Congress has never adopted any legislation that would seriously cramp the style of a President who was attempting to break the resistance of an enemy or seeking to assure the safety of the national forces.[32]

Does the power of Congress to make rules for the government and regulation of the land and naval forces permit the Congress to limit the President's power as Commander in Chief? As indicated above in the case of *Swaim v. U.S.*, the Court of Claims stated that these two powers are distinct:

> Congress may increase the Army, or reduce the Army, or abolish it altogether; but so long as we have a military force Congress cannot take away from the President the supreme command. It is true that the Constitution has conferred upon Congress the exclusive power "to make rules for the government and regulation of the land and naval forces"; but the two powers are distinct; neither can trench upon the other; the President cannot, under the disguise of military orders, evade the legislative regulations by which he in common with the Army must be governed; and Congress cannot in the disguise of "rules for the government" of the Army impair the authority of the President as Commander in Chief.[33]

The statement does not define what the President's authority as Commander in Chief is, and the specifics of the case appear to have limited applicability. The Court sustained the President in establishing a court martial of his own to try the Judge Advocate General, which was neither provided for nor expressly prohibited by statute.

[29] Corwin, Edward S., *op. cit.*, p. 192.
[30] *Ibid.*, p. 261.
[31] See above, 18.
[32] Corwin, Edward S., *op. cit.*, p. 259.
[33] 28 Court of Claims 173, 221; affirmed 165 U.S. 553 (1897).

However, there would appear to be a difference between the potential power of the Congress and the limitations on sending troops abroad that Congress has actually placed on the President in the past. There are instances in which Congress has placed limitations on the President. In selective service legislation Congress has in fact limited the power of the President to use the forces made available to him. Section 3 (e) of the Selective Training and Service Act of 1940 provided that:

Persons inducted into the land forces of the United States under this Act shall not be employed beyond the limits of the Western Hemisphere except in the Territories and possessions of the United States, including the Philippine Islands.

On December 13, 1941, this provision was suspended "during the existence of any war in which the United States is engaged, and during the 6 months immediately following the termination of any such war"; in 1946 it was repealed. In 1945 Congress extended the operation of the Selective Training and Service Act of 1940 and inserted the following proviso:

And provided further, That no man under nineteen years of age who is inducted into the land or naval forces under the provisions of this Act shall be ordered into actual combat service until after he has been given at least six months of military training of such character and to the extent necessary to prepare such inductee for combat duty; this proviso shall not be construed as preventing the assignment of enlisted men of the Navy or Coast Guard and the Reserve components thereof to duty for training on combat vessels of the Navy or Coast Guard and at naval bases beyond the continental limits of the United States.

Most of the limitations of this type are relatively recent, however. Although not posing a legal limitation and simply stating the "sense of the Senate," S. Res. 85, passed June 25, 1969, placed the Senate's view on record. It stated that a national commitment, defined to mean the use of the armed forces of the United States on foreign territory, or a promise to assist a foreign country by the use of the armed forces or financial resources of the United States, resulted "only from affirmative action taken by the executive and legislative branches of the United States Government by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment."

The appropriations power was used for the purposes of a limitation in the defense appropriations act of 1970, (P.L. 91-171, approved December 29, 1969). An amendment added to that act stated "In line with the expressed intention of the President of the United States, none of the funds appropriated by this act shall be used to finance the introduction of American ground combat troops into Laos or Thailand."

VI. Congressional Authorization Without a Declaration of War

Congress might authorize or approve and support a President's action in sending troops abroad by methods other than a formal declaration of war (or it might disapprove such actions), although some might dispute whether a particular authorization is adequate in any specific situation involving serious hostilities. In fact, there appears to be a trend toward use of authorizations in forms other than a declaration of war as a more usual method of expressing Congressional decisions. Reveley states:

Congressional authorization need not be by formal declaration of war: "[N]either in the language of the Constitution, the intent of the framers, the available historical and judicial precedents nor the purposes behind the clause" is there a requirement for such formality, particularly under present circumstances when most wars are deliberately limited in scope and purpose. A joint resolution, signed by the President, is the most tenable method of authorizing the use of force today. To be meaningful, the resolution should be passed only after Congress is aware of the basic elements of the situation, and has had reasonable time to consider their implications. The resolution should not, as rule, be a blank check leaving the place, purpose and duration of hostilities to the President's sole discretion to respond to changing circumstances. If the legislators wish to delegate full responsibility to the President, it appears that such action would be within the constitutional pale so long as Congress delegates with full awareness of the authority granted.[1]

In a footnote he adds:

Senate approval of a treaty would not suffice, as that would exclude the House from the decision-making process. An executive agreement, approved by the entire Congress and specifically described as authorization to use force, should be acceptable. Similarly, legislation to increase the size of the armed forces or to appropriate additional money to sustain a use of force might be regarded as authorization if legislative intent to that effect is made abundantly clear. Absent such clarity, simple legislation ought not to be regarded as implied approval, since it may have been adopted for reasons other than to ratify a presidential *fait accompli*. . . . Nothing can be assumed from a congressional failure to act. The burden is not upon Congress to make its views clear or be deemed to have acquiesced, but rather upon the President to obtain legislative approval before he acts.[2]

The lack of specific congressional sanction for the Korean War contributed to the criticism which President Truman received in Congress about the war. On four occasions from 1955 through 1964 Congress, in response to requests by the President, passed joint resolutions expressing support of foreign policy. These were the Formosa resolution of 1955, the Middle East resolution of 1957, the Cuban resolution of 1962 and the Vietnam or "Gulf of Tonkin" resolution of 1964. Views on their significance tend to vary according to whether or not one maintains that congressional authorization is necessary before the President can commit troops to combat overseas.

This section presents brief synopses of these resolutions and notes on their background. Also included is a resolution in some ways similar to them, the Berlin resolution of 1962.[3]

A. *The Formosa Resolution, 1955.*—Public Law 84–4, H.J. Res. 159, approved January 29, 1955, authorized the President to employ the U.S. armed forces as he deemed necessary to protect Formosa and the Pescadores against armed attack, and also to protect such related positions and to take such other measures as he judged to be required or appropriate for this purpose. It provided that the resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured and shall so report to the Congress.

President Eisenhower had submitted a Mutual Defense Treaty with the Republic of China to the Senate on January 6, 1955. There had been intermittent shelling of the Nationalist-held island of Quemoy, near the Chinese Communist port of Amoy, for some months.

[1] Reveley, W. Taylor III, *op. cit.*, p. 1289. Footnotes omitted.
[2] *Ibid.*, p. 1290.
[3] The synopses and notes on these resolutions are adapted from U.S. *Library of Congress. Legislative Reference Service.* Ernest Lent, Foreign Policy Resolutions by the Congress. Report F-170, May 25, 1966.

Climaxing a long series of threats and actions against Chiang's government, Chinese Communist forces seized the small Nationalist-held island of Yichiang some 210 miles north of Formosa on January 18.

In a special message to the Congress on January 24, President Eisenhower stated that Congress should "make clear the unified and serious intentions" of the U.S. and its "readiness to fight if necessary." He added that "authority for some of the actions which might be required" was inherent in his authority as Commander in Chief. The resolution was passed by the House by 310 votes to 3 on January 25 after a day of hearings and a day of debate. The Senate followed suit on January 28, after two days of hearings and three days of debate. The Senate vote was 75–3, with Senators Langer, Lehman and Morse in opposition.

Controversy centered on the failure of the resolution to spell out the specific area which the U.S. would fight to defend. Administration spokesmen declined to specify whether the U.S. would defend Quemoy and nearby Matsu, and these islands were not mentioned in the resolution. It left the way open for U.S. defense of these and other islands if the President deemed their defense essential to that of Formosa and the Pescadores.

The Nationalist-held Tachen island group was evacuated February 7–11. The Senate approved ratification of the defense treaty with Nationalist China on February 9, adding a number of understandings, one of which stated that no military operations would be undertaken from the territories covered by the treaty except by joint U.S.-Nationalist Chinese agreement. The President remained publicly uncommitted about Quemoy and Matsu, and the crisis gradually lessened.

B. *The Middle East Resolution, 1957.*—Public Law 85–7, H.J. Res. 117, approved March 9, 1957, authorized the President to extend military and economic aid to Middle East nations. It stated that the U.S. "regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East." It declared that, if the President determines the necessity of it, the U.S. is prepared to use armed forces to assist nations requesting assistance against armed aggression from any Communist-controlled country, provided this is consonant with the Constitution and treaty obligations of the U.S. The resolution authorized the use of $200 million of previously appropriated funds, required certain reports, and said the President should continue to support the U.N. Emergency Force in the Middle East. It required the President to report his action under the resolution in January and July of each year, a provision changed in 1961 to "whenever appropriate." It provided that the resolution would expire on a Presidential finding concerning peace and security in the area or earlier by concurrent resolution.

The reduced power and influence of Britain and France in the Middle East following the Suez Crisis of 1956 had left what Secretary Dulles considered a dangerous power vacuum there. President Eisenhower's message to Congress on January 5, 1957 enunciated the so-called Eisenhower Doctrine and urged its support by congressional resolution. House J. Res. 117, amended in both chambers, passed the Senate 72–19, and the House accepted the Senate version by 370–60.

C. *The Cuban Resolution, 1962.*—Public Law 87-733, S.J. Res. 230, approved October 3, 1962, expressed the determination of the U.S. to prevent the Marxist-Leninist regime in Cuba, by whatever means may be necessary, including the use of arms, from extending its aggressive or subversive activities to any part of the Hemisphere; to prevent the creation of an externally supported military capability there endangering U.S. security; and to work with the Organization of American States and with liberty-loving Cubans to support the aspirations of the Cuban people for self-determination.

Amid expressions of mounting concern in the Congress over reports of Soviet missiles in Cuba, President Kennedy stated on September 13, 1962, that the Soviet arms shipments did not constitute a serious threat and that, if the Communist buildup were to interfere with our security in any way, this country would do whatever must be done to protect its security and that of its allies. At that time, he stated that a congressional resolution was not necessary to his authority. After its adoption, he referred to "the authority entrusted to me by the Constitution, as endorsed by the Resolution of the Congress."

Senator Sparkman, Acting Chairman of the Foreign Relations Committee, presented the resolution to the Senate as an original resolution by that Committee and the Senate Armed Services Committee, which had met jointly to consider a number of resolutions on Cuba, some of them much stronger than S.J. Res. 230. Senator Sparkman stated that the resolution was the product of these committees and of the Executive branch, and was entirely consistent with the President's September 13 statement. In his 1965 book *Kennedy*, Theodore Sorensen suggests some direct involvement by President Kennedy. So it is clear that there was interplay between the Congress and the Executive in developing the resolution.

The resolution was adopted 86-1 in the Senate on September 20, Senator Prouty (R.-Vt.) casting the lone dissenting vote on the grounds it was not strong enough. In the House, Representative Broomfield (R.-Mich.) offered a motion to recommit the resolution with instructions to the House Foreign Affairs Committee to include a provision urging the President to implement and enforce the Monroe Doctrine throughout the Hemisphere. The Broomfield motion was defeated 140-251. S.J. Res. 230 was then adopted 384-7.

On the same day President Kennedy signed this resolution, he also signed S.J. Res. 224, Public Law 87-736, authorizing the callup of 150,000 members of the ready reserve.

The famous aerial photographs of medium-range ballistic missile sites in Cuba were seen by the President on October 16, about three weeks after S.J. Res. 230 cleared the Congress. The President's demand that Khruschchev withdraw the missiles was made on October 22.

The Cuban resolution is probably the least typical of the major "foreign-policy-support" resolutions, differing in several respects from the Formosa, Middle East and "Gulf of Tonkin" resolutions. Who made the initiative is unclear, although its origin in the broadest sense appears to have been the pressure of the Congress on the Administration for a stronger approach to the Cuban problem. The resolution contains no clauses "authorizing" the President to do anything, and the President took the position that he needed no authorization,

although he welcomed an appropriate endorsement. There are no specific provisions on terminating the resolution.

D. *The Berlin Resolution, 1962.*—House Con. Res. 570, concurred in on October 10, 1962, states the sense of the Congress that the continued exercise of U.S., British and French rights in Berlin constituted a fundamental political and moral determination; that the U.S. would regard any violation of those rights, including the rights of ingress and egress, as intolerable; and that the U.S. was determined to prevent any such violation by whatever means may be necessary, including the use of arms; and to fulfill its commitment to the people of Berlin.

The Berlin Crisis of 1961 faded in October of that year, with Khrushchev's downplaying of the importance of a deadline for the signing of an East German peace treaty. In 1962, Berlin corridor harassment had continued, as did incidents involving the Berlin wall, construction of which had begun the previous August. The Soviet Union continued to assert the intention to sign a separate peace pact unless the Western powers came to terms of a new regime for Berlin, but Khrushchev refrained from imposing a new deadline. Meanwhile, as indicated in the previous section on the Cuban resolution, the nation was debating whether there was a serious threat from Soviet missiles shipped to Cuba.

Representative Zablocki, sponsor of the resolution, pointed out that the Congress, representing the American people, had not yet been heard from in support of President Kennedy's position on Berlin. The resolution cleared the House 312–0 October 5 and the Senate five days later by voice vote, with six Senators on the floor at the time.

The resolution, while clearly supporting U.S. foreign policy against threatened Communist pressure, is not usually considered in quite the same category as the four major foreign-policy-support resolutions, in that the President apparently did not request it and it did not take the form of a joint resolution.

E. *The "Gulf of Tonkin" Resolution, 1964.*—Sometimes called "Southeast Asia" Resolution. Public Law 88–408, H.J. Res. 1145, approved August 10, 1964, "approves and supports the determination of the President as Commander in Chief, to take all necessary measures to repel any armed attack" on U.S. forces and to prevent further aggression. It affirms that the United States is "prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom." It provides that the resolution shall expire by presidential determination concerning the peace and security of the area or by congressional concurrent resolution.

The two Gulf of Tonkin incidents occurred on August 2 and 4, 1964, with U.S. air retaliation following on August 4. In a special message on August 5, President Johnson recommended prompt enactment of a resolution expressing support for all necessary action to protect United States armed forces and to assist nations covered by the SEATO treaty, "to give convincing evidence to the aggressive Communist nations, and to the world as a whole, that our policy in Southeast Asia will be carried forward—and that the peace and security of the area will be preserved." The President cited the importance of showing

hostile nations "that there is no division among us," at a time "when we are entering on three months of political campaigning."

Within two days, the resolution had been adopted, 414–0 in the House and 88–2 in the Senate. Some members of Congress have spoken of a "blank check," a vast grant of power to the President. President Johnson, referring to the air retaliation he ordered, stated on signing the resolution, "As Commander in Chief, the responsibility was mine—and mine alone * * *" and subsequently, "This resolution confirms and reinforces powers of the Presidency * * *" [4]

On March 12, 1970, the Department of State commented on a joint resolution [5] which would, among other things, repeal four joint foreign-policy-support resolutions effective with the *sine die* adjournment of the Ninety-first Congress. The relevant portions of the letter from H. G. Torbert, Jr., Acting Assistant Secretary for Congressional Relations, to Chairman Fulbright of the Senate Foreign Relations Committee follow: [6]

> For reasons discussed in detail below, the Department believes that repeal of the resolutions specified in section 1 is a matter within the discretion of the Congress. We neither advocate nor oppose congressional action . . .
>
> Each of the resolutions specified in section 1 was passed in response to a crisis situation in the affected area. Thus, the Formosa Straits resolution dealt with a direct military threat against the offshore islands; the Mid-East resolution arose from the threat of Soviet expansionism in the area and the situation following the 1956 Suez/Sinai war; the Cuba resolution was passed in the context of adventuristic Soviet military policies directly threatening our security; and the Tonkin Gulf resolution responded to an assault upon our naval forces in international waters.
>
> In these moments of crisis, the use of these resolutions as a highly visible means of executive-legislative consultation was instrumental in demonstrating unified support for our policies to the world and the American public and in indicating congressional approval for the possible employment of U.S. military forces in support of those policies.
>
> The crisis circumstances giving rise to these resolutions have long since passed. As indicated by the specific analyses below, the administration is not depending on any of these resolutions as legal or constitutional authority for its present conduct of foreign relations, or its contingency plans.
>
> Equally important, the administration does not consider the continued existence of these resolutions as evidence of congressional authorization for or acquiescence in any new military efforts or as a substitute for the policy of appropriate and timely congressional consultation to which the administration is firmly committed.
>
> Should a situation arise calling into play our treaty commitments or otherwise seriously and immediately affecting vital United States interests in the areas affected by these resolutions, we would wish to see Congress at that time fulfill its proper role under the Constitution in the decisionmaking process. We would keep the appropriate committees and the congressional leadership fully informed and would cooperate to the maximum in Congress' fulfillment of its responsibilities. Should circumstances warrant, and after consultation with appropriate committees and the Congressional leadership, we might indeed seek further resolutions in fresh crises.
>
> In short, as a functional matter, these resolutions have no continuing significance in the foreign policy formulation process, and it is for Congress to determine whether they should be terminated or simply allowed to fade away.

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[4] Public Papers of the Presidents: Lyndon B. Johnson. Vol. II. 1963–64. pp. 946–7.

[5] S.J. Res. 166, introduced by Senators Mathias and Mansfield, Dec. 8, 1969, to repeal legislation relating to the use of the Armed Forces of the United States in certain areas outside the United States and to express the sense of the Congress on certain matters relating to the war in Vietnam, and for other purposes.

[6] *U.S. Congress. Senate. Committee on Foreign Relations.* Termination of Southeast Asia Resolution. Report, May 15, 1970, 91st Cong., 2d sess. No. 91-872. Washington, U.S. Govt. Print. Off., 1970. pp. 20–24.

APPENDIX I

MAJOR U.S. ARMED ACTIONS [1] OVERSEAS, WITH RELEVANT CONGRESSIONAL ACTION, 1789–1970

A. DECLARED WARS

1. *War of 1812.*—Congress declared war on Great Britain, June 17, 1812. Madison's review of grievances did not actually call for war, but Congress resolved the matter with a joint resolution declaring war.

2. *Mexican War, 1846.*—U.S. troops under General Zachary Taylor were ordered by President Polk to occupy the land between the Nueces and Rio Grande Rivers, territory also claimed by Mexico. This was done without any authorization from Congress. Mexican troops surprised and mauled an American unit, and Polk sent a message to Congress asking that it recognize the existence of hostilities. Congress responded by a resolution declaring that a state of war existed between the U.S. and Mexico.

There was opposition to the war from the beginning, which grew stronger with time. The House added a rider to a resolution honoring General Taylor on January 3, 1848, stating that the war was begun "unnecessarily and unconstitutionally" by the President.

3. *Spanish-American War, 1898.*—President McKinley at first merely requested Congress' permission to use military and naval forces to effect a cessation of hostilities between Spain and its rebellious possession, Cuba, and to establish a stable government in the latter. The Senate added a provision to this request recognizing the independence of Cuba. This provision was opposed by the President and deleted in the conference with the House. A resolution was passed giving the President discretionary authority to use military force to satisfy U.S. aims with respect to Spain and Cuba. Spain responded by declaring war on the U.S. In response, McKinley ordered Dewey to attack the Philippines. He then asked for a declaration of war, which Congress gave, stating that war had existed from the day Spain declared it against the U.S.

4. *World War I, 1917–1918.*—President Wilson asked Congress to recognize that the course of the German government amounted to war against the United States. Congress responded by a joint resolution declaring that a state of war existed between the Imperial German Government and the U.S. War was not declared against Austria-Hungary until December, 1917, eight months after the declaration against Germany.

5. *World War II.*—After the Japanese attack on Pearl Harbor on December 7, 1941, President Roosevelt went before Congress the next day, and asked for a declaration of war, dating from the time of the Pearl Harbor attack. Germany and Italy, who were allies of Japan, then declared war on the United States. On December 11, 1941, President Roosevelt asked that Congress recognize a state of war between the U.S. and Germany and the U.S. and Italy, a request to which Congress acceded the same day.[2]

B. OTHER ACTIONS

Armed Action	*Congressional Action*
Undeclared naval war with France, 1798–1800.—This was a limited war, fought essentially for the protection of American merchant ships which were being harassed by French naval vessels. This contest included some land actions, i.e., the capture by U.S marines of a French privateer under the guns of the forts in the Dominican city of Puerto Plata.	Congress: 1. Created a Navy Department. 2. Voted appropriations for new warships. 3. Abrogated treaties and consular conventions with France. 4. Authorized the enlistment of a "provisional army" for the duration of the emergency. 5. Authorized seizure and bringing into port of armed French vessels which had been preying on American shipping. Did not authorize seizure of unarmed French vessels.[3]

[1] Armed action means the confrontation of U.S. forces with those of a foreign government or revolutionary faction, usually, but not always resulting in an actual clash.

[2] For an account of the moves short of war by which the U.S. sought to aid Britain in its fight against Germany, see part B of this Appendix.

[3] Two days before Congress authorized the seizure of French ships, a lone U.S. naval vessel had been sent out on patrol to protect U.S. coastal waters between Long Island and the Virginia Capes.

Armed Action	*Congressional Action*
War with Tripoli, 1801–1805.—The so-called Barbary pirates exacted tribute from countries whose ships plied the Mediterranean. The European nations paid, finding this the easiest way. When Jefferson became President the Pasha of Tripoli, feeling tribute paid by U.S. was insufficient, declared war. Jefferson sent warships to the Mediterranean which, after several naval actions, succeeded in winning a treaty from Tripoli more favorable than any other nation had yet secured from her.[4] During this conflict a few U.S. marines were landed with U.S. Agent William Eaton, with a view to raising a force to free the crew of the *Philadelphia*. This expedition penetrated as far as Derna, on Tripoli's eastern frontier, and probably influenced the Pasha to make peace.	In 1802 Congress passed a law entitled "An Act for the Protection of the Commerce and Seamen of the United States, against the Tripolitan Cruisers." It authorized the President to protect commerce and seamen, to seize and make prizes of vessels belonging to Tripoli, and all other acts of precaution and hostility as in a state of war. This amounted to subsequent approval of Jefferson's actions, plus the authority which only Congress could grant: to take prizes and to give commissions to privateers. An act levying revenue duties to pay the cost of the naval operations was likewise approved.
Second Barbary War, 1815.—The Dey of Algiers declared war against the U.S. Two U.S. naval squadrons were sent to the Mediterranean. Stephen Decatur, commander of one of the squadrons, dictated peace to Algiers, and then to Tunis and Tripoli, ending the Barbary blackmail as far as the U.S. was concerned. Within a year, European warships took action against the Barbary corsairs, and the payment of tribute ended entirely.	Congress authorized the expedition against Algiers. Specifically, it authorized the use of armed vessels, "as may be judged requisite by the President." The same legislation made it lawful to take prizes.
Boxer Rebellion, 1900.—In 1900 a series of anti-foreign disorders erupted in China, fomented by a secret society known to Westerners as Boxers. This uprising was encouraged by elements within the Imperial Government, but it was not, strictly speaking, a war waged by that government. The high point of the rebellion came when the Boxers rampaged through Peking, and laid siege to the foreign legations there. An international force was organized to lift the siege, and a U.S. contingent of 2,500 men was sent by President McKinley to join this international force. These U.S. troops came from forces already mobilized for the Spanish-American War and the Philippine Insurrection. For many years thereafter the U.S. maintained a guard at Peking and other military forces at certain places on Chinese territory, pursuant to authority acquired from the Chinese.	None—Congress was not in session at the time. There was little protest when Congress did reconvene, however.

[4] Although favorable in comparative terms, the treaty still recognized the right of the pirates to obtain ransom for imprisoned Americans.

B. OTHER ACTIONS—continued

Armed Action

Panama, 1903.[5]—U.S. warships in Central American waters were ordered to seize the Panama railroad, keep the Isthmus of Panama clear, and prevent Colombia from landing troops within 50 miles of the Isthmus if a revolution broke out. These orders were issued on November 2, 1903, and a revolution broke out in Panama on November 3, 1903. Troops from the *U.S.S. Nashville* prevented loyal Colombian troops from suppressing the revolt. On November 4 Panama declared its independence. The U.S. recognized the independence of Panama *de facto* on November 6, and *de jure* a week later.

Congressional Action

No chance for Congress to act. Senate ratified the Hay-Bunau-Varilla Treaty on February 23, 1904.

Armed Action

Armed hostilities with Mexico, 1914–1917.—1. During a time of revolutionary upheaval in Mexico there were at least two major armed actions by U.S. forces in Mexico. The first was the occupation of Vera Cruz in 1914, ostensibly for failure of the Mexicans to fire a 21 gun salute to the American flag. The salute had been demanded by Admiral Mayo, U.S. Navy, following the release by Mexico of an officer and nine sailors who had been arrested and paraded through the streets of Tampico after going ashore without the permission of Mexican authorities. President Wilson backed Admiral Mayo's demands, and ordered the North Atlantic battleship fleet to Tampico. Wilson's motive, essentially, was to force Huerta out as Mexican president, so that a constitutional government would come to power. Tampico was to be attacked, but Vera Cruz was made the objective when it was learned that a German ship was heading there with munitions for Huerta. There was a clash with Mexican naval cadets and soldiers resulting in some 400 casualties, mostly Mexican. Following the mediation of Argentina, Brazil, and Chile, U.S. troops were withdrawn from Mexico.

Congressional Action

President Wilson requested authority to use the armed forces, two days before they were actually landed. Congress passed a joint resolution giving him such authority the day after.

[5] In terms of the military forces involved, the Panama episode of 1903 cannot be classified as a major action. In terms of the stakes involved, and the long range impact, it seems appropriate to so classify it.

B. OTHER ACTIONS—continued

Armed Action	*Congressional Action*
2. In October 1915, the U.S. recognized the Carranza government in Mexico. General "Pancho" Villa, whom the U.S. had briefly supported, revolted, hoping to capitalize on anti-American sentiment and embroil the U.S. in a war with Mexico. To this end his guerrilla forces held up a train carrying 17 American mining engineers in January, 1916, and shot all but one on the spot. The following March his forces raided the town of Columbus, New Mexico, killing 19 Americans, and burning the town. Public opinion in the United States demanded the punishment of Villa, and Wilson ordered a punitive expedition into Mexico, having first obtained the consent, however grudging, of the Carranza government. The U.S. forces never found Villa, but they did clash with Mexican government troops at two points, Carrizal and Parral. In the meantime, Villa raided Glen Springs, Texas. Mexico and the U.S. moved toward war, as Carransa demanded the withdrawal of American forces and Wilson called out the National Guard and incorporated it into the Army. But neither side really wanted war, and although no satisfactory settlement was reached, Wilson withdrew U.S. troops. The increasing possibility of American involvement in Europe probably contributed to his decision.	The use of armed forces was approved by the Senate, which passed a joint resolution offered by Sen. LaFollette. The use of armed force was declared to be for the sole purpose of punishing the outlaws who had raided Columbus. This resolution did not come up for a vote in the House, however.
Expeditions to European Russia and Siberia, 1918–1920.—Following the Bolshevik Revolution, Allied expeditions were sent to Murmansk and Archangel, where they joined British and French troops in operations against Bolshevik troops. Wilson resisted allied pressure for large-scale anti-Communist intervention. After the end of the war U.S. troops entered Siberia through Vladivostok as part of an allied force, chiefly Japanese, sent to safeguard military supplies and assist the Czechoslovak legion to escape from Soviet territory. U.S. forces reportedly participated in this expedition as much to keep an eye on Japanese plans as anything else. U.S. troops were withdrawn in 1920.	President Wilson was criticized in Congress for waging war in both North Russia and Siberia. Two resolutions were introduced in Congress to compel the withdrawal of U.S. troops from the Siberian venture, but both died in committee.

Armed Action

Nicaragua, 1926–1933. The U.S. employed military occupation to end civil war and establish elections and regular government. President Coolidge undertook the occupation on his own responsibility. Henry L. Stimson was sent as the President's personal representative, and managed to work out an agreement accepted by contending Nicaraguan factions, except for General Sandino, one of the Liberal generals, and his followers. Sandino carried on guerrilla warfare against the Nicaraguan government and U.S. forces for the remainder of the occupation. At its height, over 5,000 sailors and marines were either in Nicaragua or in transit there.

Congressional Action

Resolutions were introduced in Congress requesting immediate withdrawal of armed forces from Nicaragua. Hearings were held by the Foreign Relations Committee and the ensuing report, Senate Report 498, 70th Congress, defended retention of troops in Nicaragua until settlement worked out by Stimson could be carried out. This report expressed no opinion on the constitutionality of dispatching troops to Nicaragua in the first place. Mexico and the U.S. backed rival factions in the Nicaraguan dispute. This added to existing tensions between the U.S. and Mexico. This tension evoked a "sense of the Senate" resolution, introduced by Sen. Frazier of North Dakota, that the President not exercise his powers as Commander in Chief to send any of our armed forces into Mexico, or to mobilize troops on the Mexican border, or assemble fighting units of the navy in waters adjacent to Mexico, while Congress was not in session. If the President contemplated such action, the resolution directed him to call Congress into special session and explain his reasons for proposed military moves.

This resolution did not contest the President's powers as Commander in Chief, but it did represent an attempt to curb his initiative in bringing about situations that might become dangerous, or lead to armed clashes. It was not adopted, but public opinion grew increasingly opposed to intervention by U.S. troops in any foreign country. The policy of intervention in Latin America was ended during the 1930's, and the country attempted to insulate itself against involvement in foreign wars through the Neutrality Acts.

B. OTHER ACTIONS—continued

Armed Action	*Congressional Action*
China, 1927. In 1927, anti-foreign disorders, which had taken place repeatedly since 1911, reached a climax. There was fighting at Shanghai between Nationalist and anti-Nationalist forces, which led to the landing of 1,250 Marines, who joined an international force that reached 13,000 men. A naval guard had to be stationed at the American consulate in Nanking. A small contingent of sailors was landed at Hankow at the beginning of the year, and a tiny contingent of Marines in April. A U.S. and a British warship fired on Chinese soldiers to protect the escape of Americans and other foreigners from Nanking. By the end of 1927, the U.S. had 44 naval vessels in Chinese waters, and 5,670 men ashore. Other countries also sent considerable forces to the area. After U.S. signed an agreement with Nationalist China in 1928 which constituted recognition, U.S. troops were gradually withdrawn.	No specific action was taken by Congress with respect to the landing of troops. However a resolution calling for the end of America's special privileges in China won overwhelming approval in the House.
Pre-War moves, 1939-1941.—After the outbreak of World War II in Europe, the U.S. took a number of actions designed to safeguard its security and that of the Western Hemisphere and to aid the allied powers against Nazi Germany. Among these actions were the following: 1. Troops were sent to garrison air and naval bases obtained from Great Britain in exchange for overage destroyers. These bases were located in Newfoundland, Bermuda, St. Lucia, Jamaica, Antigua, Trinidad, British Guiana, and the Bahamas. 2. Greenland was placed under American control, and the U.S. was given permission to build bases there by agreement with the Danish Minister in Washington, an agreement disavowed by the captive Danish government. 3. The President ordered troops to occupy Dutch Guiana, under agreement with the Dutch government in exile. 4. Iceland was taken under U.S. protection for strategic reasons, after the British had indicated they could no longer garrison their base there, and after agreement had been secured from the Icelandic government. 5. The President ordered the navy to patrol the ship lanes to Europe. These patrols began to convoy lend-lease shipments as far as Iceland, where the British navy picked them up. Clashes with German U-boats resulted from this activity.	President Roosevelt did not seek specific congressional authorization for many of the actions he took to aid Britain and other nations fighting the Axis. However, despite fierce opposition, Congress passed the Lend-Lease Act. It also passed the first peacetime conscription law in U.S. history (which it renewed by a margin of one vote) and passed the bill permitting the arming of merchant ships. In addition, Congress repealed those sections of the Neutrality Act of 1939 which forbade trade with belligerants, established combat zones into which U.S. ships were not to sail, and prevented the arming of merchantmen. In short, President Roosevelt did not seek the authorization of Congress for certain moves he made as Commander in Chief, but he did obtain what was in effect the endorsement of Congress for his policy of assisting one side in an international conflict.

B. OTHER ACTIONS—continued

Armed Action	*Congressional Action*
Korean Police Action, 1950–1953.— North Korean troops crossed the borders of South Korea on June 25, 1950. The UN Security Council, called into special session, denounced the invasion as an act of aggression, called for an immediate cease-fire, and requested member nations to render every assistance to see that its resolution was enforced. On June 27, President Truman announced that he had ordered U.S. air and sea forces to give the Korean government troops cover and support; that he had ordered the 7th Fleet to prevent any attack on Formosa as well as to prevent any Chinese Nationalist sea or air operations against the Chinese mainland. Later that day the Security Council adopted a resolution calling upon the members of the UN to furnish such assistance to the Republic of Korea as might be necessary to restore international peace and security in the area. In response to this resolution, President Truman ordered ground forces to Korea to repel the North Korean attack. Since the Korean action was undertaken under UN sponsorship, other countries also sent contingents, but that of the U.S. was by far the largest.	A few members of both houses voiced criticism that the President had usurped Congress' power to declare war. Resolutions were introduced in 1951 to declare war against North Korea and Communist China, and also for an orderly withdrawal of U.S. forces. None of these resolutions came to a vote. If Congress did not formally accept, neither did it as a whole contest the contention of the Executive that it acted in response to the call of the UN Security Council. The State Department, in its memorandum defending the authority of the President to repel the attack in Korea, pointed to the debates on the UN Charter in which it was asserted that by becoming a party thereto, the U.S. would be obligated by commitments the organization would undertake, including commitments to international policing, and that it would be within the power of the Executive to see that these agreements were carried out. The Senate had approved the UN Charter, and there was some feeling, particularly at the outbreak of the Korean conflict, that it had therefore authorized, at least implicitly and in a general way, actions that might be taken under it. Furthermore the entire Congress had passed the UN Participation Act.
Landing of troops in Lebanon, 1958.— Lebanon has always preserved a delicate internal balance between Christians and Moslems. This was threatened by certain Moslems, reportedly encouraged by President Nasser of the UAR. When a pro-Nasser coup took place in Iraq in July of 1958, the President of Lebanon sent an urgent plea for assistance to President Eisenhower, saying that his country was threatened both by internal rebellion and "indirect aggression." President Eisenhower responded by sending 5,000 marines to Beirut to protect American lives and help the Lebanese maintain their independence. This force was gradually increased to 14,000 soldiers and marines, who occupied strategic positions throughout the country. After the matter had been taken to the UN, and the General Assembly had passed a resolution calling on member states to respect one another's integrity and refrain from interfering in one another's internal affairs, and also requesting that arrangements be made for the withdrawal of troops, the situation stabilized somewhat. U.S. troops were then gradually withdrawn on a schedule worked out with Lebanese authorities.	The "Eisenhower Doctrine," a joint resolution, had been passed by Congress in 1957 authorizing the President to use U.S. armed forces to assist any nation in the Middle East requesting help against Communist aggression. President Eisenhower stressed the provocative nature of Soviet and Cairo broadcasts in justifying the landing of troops.

B. OTHER ACTIONS—continued

Armed Action	*Congressional Action*
Deployment of troops, Thailand, 1961–1970.—In 1961 a detachment of 259 Marines was sent to Thailand to set up a helicopter maintenance facility for ferrying supplies to anti-Communist forces in Laos, when the military situation in that country began to deteriorate. In 1962, when anti-Communists fled across the Mekong into Thai territory, and it appeared that Pathet Lao might move into Thailand, U.S. forces numbering 5,000 men were sent into Northeast Thailand to guard against that possibility. The UK, Australia, and New Zealand also sent in small units, in a show of SEATO solidarity. As the threat receded, the U.S. and other troops were gradually withdrawn. The building of U.S. air bases in Thailand began around 1964, and by 1965 U.S. air strikes against the Vietcong and North Vietnam were being flown from Thailand. These air bases in Thailand are still maintained.	In 1969 Congress voted to prohibit a commitment of U.S. ground troops to Laos or Thailand, as an amendment to the defense appropriations bill.
Intervention in the Dominican Republic, 1965.—On April 24, 1965, a revolt broke out in Santo Domingo, capital of the Dominican Republic. On April 28 President Johnson ordered a contingent of several hundred marines to land there, stating that Dominican "military authorities" had requested assistance, as they could no longer guarantee the safety of American citizens living in the Dominican Republic. The President stated that assistance would also be available to protect nationals of other countries as well. The first U.S. contingent numbered only 400 men, but on May 2 the President announced he was sending in 200 more, with an additional 4,500 to follow at the earliest possible moment. Eventually U.S. forces in the Dominican Republic were to number 21,500. Total personnel involved numbered over 30,000. In announcing the dispatch of additional troops to the Dominican Republic, President Johnson cited increasing Communist control of the revolution, plus increasing needs for food and medical supplies, etc.	Congressional leadership was informed before the move was made into the Dominican Republic. Several resolutions were offered supporting the President's action in the Dominican Republic. The most prominent was H. Res. 560, endorsing the use of force individually or collectively by any country in the Western hemisphere to prevent a Communist takeover. It passed the House by a vote of 312–52. Many members of Congress felt that the President had overestimated the extent of Communist penetration of the revolutionary movement. Others have charged that the intervention was motivated not so much by a desire to save lives and property as by a desire to prevent a Communist takeover in the country, a desire which, in their view, arose from an inaccurate assessment of the danger of such a takeover. Some argued that the U.S. should have consulted the OAS before it intervened in the Dominican Republic, something which it did not do.

B. OTHER ACTIONS—continued

Armed Action

A peace commission from the Organization of American States succeeded in achieving a cease-fire among the contending Dominican groups, and on May 6, 1965, the OAS voted to create an Inter-American Peace force, to assist in restoring peace and order. As various elements of this Inter-American Peace Force began to arrive in the Dominican Republic, the U.S. withdrew a proportionate number of its forces. By the end of 1965 this Inter-American force numbered 9,400, with U.S. troops serving as part of that force. An Ad Hoc Commission of the OAS worked out a formula to restore constitutional government, and finally on September 3, 1965 a civilian, Hector Garcia Godoy, was inaugurated as provisional president. All U.S. troops were gradually withdrawn.

Vietnam, 1964-present. A U.S. Military Assistance Advisory Group had been in South Vietnam ever since the French relinquished authority there in 1954. In the late 1950's and early 1960's there was a marked step-up in guerrilla activities against the South Vietnamese government. This guerrilla activity was supported and directed from North Vietnam. U.S. military advisers were gradually increased, so that by 1962 there were 12,000 in the country, and this number was doubled by 1964.

U.S. policy was to work with the government of South Vietnam until the Vietcong insurgency would be suppressed, or until the forces of South Vietnam were capable of suppressing it. As time went on that date seemed farther and farther in the future.

It was against this background that the Gulf of Tonkin episode took place. On August 2, 1964, North Vietnamese torpedo boats were reported to have attacked the *U.S.S. Maddox* in international waters in the Gulf of Tonkin. The *Maddox* returned the fire, and aircraft from the *U.S. Ticonderoga* also fired on the torpedo boats. The *Maddox* was attacked again, along with the *C. Turner Joy* on August 4. On August 5, bases and an oil depot used as supporting facilities for the torpedo boats were bombed in retaliation, at President Johnson's orders.

Congressional Action

Tonkin Gulf Resolution—On August 5, 1964, President Johnson asked Congress for a resolution "expressing the unity and determination of the United States in supporting freedom and protecting peace in Southeast Asia." He recommended a resolution which would express the support of Congress for all necessary action to protect U.S. armed forces and to assist nations covered by the SEATO Treaty. Two days later Congress voted the Tonkin Gulf Resolution, which the President signed into law on August 10. Its operative clauses read as follows: "That the Congress approves

B. OTHER ACTIONS—continued

Armed Action

On February 7, 1965, Communist forces attacked a U.S. ground installation. Seven U.S. soldiers were killed, and 109 wounded. President Johnson met with the National Security Council and congressional leaders, following which he announced that U.S. and South Vietnamese Air Forces had been directed to launch retaliatory attacks. These attacks were to develop into a program of bombing missions, while at the same time the U.S. began a buildup of its ground forces in Vietnam. Except for occasional pauses, the bombing campaign continued until the partial halt announced on March 31, 1968, and the complete halt seven months later. Ground forces reached a peak of 535,000 before the program of gradual withdrawal was begun.

Since the Spring of 1965 the U.S. has indicated an interest in settling the war by negotiation. All attempts at bringing both sides together failed until President Johnson's speech of March 31, 1968, announcing the partial bombing halt, and requesting North Vietnam to begin talks at once, The only result of these talks to date has been the total cessation of the bombing, in return for permitting the Saigon government to participate in the talks. As a further concession, the National Liberation Front (Viet Cong) was also permitted to participate.

Congressional Action

and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression. Sec. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in Southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom." The resolution is to expire when the President determines that the peace and security of the area are reasonably assured, or earlier by concurrent resolution of Congress.

The Tonkin Gulf Resolution (PL 88-408), passed the Senate by a vote of 88-2 and the House by a vote of 416 to 0. Growing anti-war sentiment in the Congress was reflected in a number of resolutions, while members favoring the Executive's Vietnamese policy introduced resolutions of support. By the time of this writing the Senate had repealed the Tonkin Gulf Resolution. Some other measures presently in effect are as follows:

1. The so-called "national commitments" resolution (Sen. Res. 85, 91st Congress), a resolution expressing the sense of the Senate that a U.S. commitment to a foreign power "necessarily and exclusively results" from affirmative action taken by both legislative and executive branches, through a treaty, convention, or other legislative instrumentality.

B. OTHER ACTIONS—continued

Armed Action | *Congressional Action*

2. Title IV of PL 90–5, a statement of congressional policy expressing its firm intention to provide all necessary support for the armed forces fighting in Vietnam; its support of the efforts by the President and others to prevent expansion of the war, and bring the conflict to an end through a negotiated settlement which will preserve the honor and protect the vital interest of the U.S. and allow the people of South Vietnam to determine their own affairs; and finally, declaring its support for the convening of a new conference to pursue the general principles of the Geneva Accords of 1954 and 1962, and to formulate plans to bring the conflict to an honorable end.
3. House Resolution 61, 91st Congress. Affirms support of the House for the efforts of the President to negotiate a just peace in Vietnam, expresses hope of U.S. people for peace, calls attention to numerous peaceful overtures made by the U.S., requests President to continue to press North Vietnam to abide by the Geneva Convention of 1949 in the treatment of war prisoners, calls for free elections in Vietnam and announces willingness to abide by results of such elections.

Entrance into Cambodia, 1970.—On April 30, 1970, President Nixon announced that U.S. and South Vietnamese troops had crossed the border into Cambodia in order to wipe out Communist sanctuaries there. He said that all American forces would be withdrawn by the end of June.

4. The Senate passed an amendment to the Foreign Military Sales Bill (H.R. 15628) cutting off all funds for U.S. forces in Cambodia after June 30, 1970, unless Congress authorizes their operations in that country. The amendment also denies U.S. funds for the support of the troops of other countries which might come to the assistance of Cambodia.
5. A number of measures are pending to cut off all funds for military operations in Vietnam by a specified date.

APPENDIX II

Instances of Use of United States Armed Forces Abroad, 1798–1970

1798–1800—Undeclared naval war with France.—This contest included land actions, such as that in the Dominican Republic, city of Puerto Plata, where marines captured a French privateer under the guns of the forts.

1801–05—Tripoli.—The First Barbary War, including the *George Washington* and *Philadelphia* affairs and the Eaton expedition, during which a few marines landed with United States Agent William Eaton to raise a force against Tripoli in an effort to free the crew of the *Philadelphia.* Tripoli declared war but not the United States.

1806—Mexico (Spanish territory).—Capt. Z. M. Pike, with a platoon of troops, invaded Spanish territory at the headwaters of the Rio Grande deliberately and on orders from Gen. James Wilkinson. He was made prisoner without resistance at a fort he constructed in present day Colorado, taken to Mexico, later released after seizure of his papers. There was a political purpose, still a mystery.

1806–10—Gulf of Mexico.—American gunboats operated from New Orleans against Spanish and French privateers, such as La Fitte, off the Mississippi Delta, chiefly under Capt. John Shaw and Master Commandant David Porter.

1810—West Florida (Spanish territory).—Gov. Claiborne of Louisiana, on orders of the President, occupied with troops territory in dispute east of Mississippi as far as the Pearl River, later the eastern boundary of Louisiana. He was authorized to seize as far east as the Perdido River. No armed clash.

1812—Amelia Island and other parts of east Florida, then under Spain.—Temporary possession was authorized by President Madison and by Congress, to prevent occupation by any other power; but possession was obtained by Gen. George Matthews in so irregular a manner that his measures were disavowed by the President.

1812–15—Great Britain.—War of 1812. Formally declared.

1813—West Florida (Spanish territory).—On authority given by Congress, General Wilkenson seized Mobile Bay in April with 600 soldiers. A small Spanish garrison gave way. Thus we advanced into disputed territory to the Perdido River, as projected in 1810. No fighting.

1813–14—Marquesas Islands.—Built a fort on island of Nukahiva to protect three prize ships which had been captured from the British.

1814—Spanish Florida.—Gen. Andrew Jackson took Pensacola and drove out the British with whom the United States was at war.

1814–25—Caribbean.—Engagements between pirates and American ships or squadrons took place repeatedly especially ashore and offshore about Cuba, Puerto Rico, Santo Domingo, and Yucatan. Three thousand pirate attacks on merchantmen were reported between 1815 and 1823. In 1822 Commodore James Biddle employed a squadron of two frigates, four sloops of war, two brigs, four schooners, and two gunboats in the West Indies.

1815—Algiers.—The Second Barbary War, declared by our enemies but not by the United States. Congress authorized an expedition. A large fleet under Decatur attacked Algiers and obtained indemnities.

1815—Tripoli.—After securing an agreement from Algiers, Decatur demonstrated with his squadron at Tunis and Tripoli, where he secured indemnities for offenses against us during the War of 1812.

1816—Spanish Florida.—United States forces destroyed Nicholls Fort, called also Negro Fort, which harbored raiders into United States territory.

1816–18—Spanish Florida—First Seminole War.—The Seminole Indians, whose area was a resort for escaped slaves and border ruffians, were attacked by troops under Generals Jackson and Gaines and pursued into northern Florida. Spanish posts were attacked and occupied, British citizens executed. There was no declaration or congressional authorization but the Executive was sustained.

1817—Amelia Island (Spanish territory off Florida).—Under orders of President Monroe, United States forces landed and expelled a group of smugglers, adventurers, and freebooters.

1818—Oregon.—The U.S.S. *Ontario*, dispatched from Washington, landed at the Columbia River and in August took possession. Britain had conceded sovereignty but Russia and Spain asserted claims to the area.

1820–23—Africa.—Naval units raided the slave traffic pursuant to the 1819 act of Congress.

1822—Cuba.—United States naval forces suppressing piracy landed on the northwest coast of Cuba and burned a pirate station.

1823—Cuba.—Brief landings in pursuit of pirates occurred April 8 near Escondido; April 16 near Cayo Blanco; July 11 at Siquapa Bay; July 21 at Cape Cruz; and October 23 at Camrioca.

1824—Cuba.—In October the U.S.S. *Porpoise* landed bluejackets near Matansas in pursuit of pirates. This was during the cruise authorized in 1822.

1824—Puerto Rico (Spanish territory).—Commodore David Porter with a landing party attacked the town of Fajardo which had sheltered pirates and insulted American naval officers. He landed with 200 men in November and forced an apology.

1825—Cuba.—In March cooperating American and British forces landed at Sagua La Grande to capture pirates.

1827—Greece.—In October and November landing parties hunted pirates on the islands of Argenteire, Miconi, and Andross.

1831–32—Falkland Islands.—To investigate the capture of three American sealing vessels and to protect American interests.

1832—Sumatra.—February 6 to 9.—To punish natives of the town of Quallah Battoo for depredations on American shipping.

1833—Argentina.—October 31 to November 15.—A force was sent ashore at Buenos Aires to protect the interests of the United States and other countries during an insurrection.

1835–36—Peru—December 10, 1835 to January 24, 1836, and August 31 to December 2, 1836.—Marines protected American interests in Callao and Lima during an attempted revolution.

1836—Mexico.—General Gaines occupied Nacogdoches (Tex.), disputed territory from July to December during the Texan war for independence, under orders to cross the "imaginary boundary line" if an Indian outbreak threatened.

1838–39—Sumatra—December 24, 1838, to January 4, 1938.—To punish natives of the towns of Quallah Battoo and Muckie (Mukki) for depredations on American shipping.

1840—Fiji Islands—July.—To punish natives for attacking American exploring and surveying parties.

1841—Drummond Island, Kingsmill Group.—To avenge the murder of a seaman by the natives.

1841—Samoa—February 24.—To avenge the murder of an American seaman on Upolu Island.

1842—Mexico.—Commodore T. A. C. Jones, in command of a squadron long cruising off California, occupied Monterey, Calif., on October 19, believing war had come. He discovered peace, withdrew, and saluted. A similar incident occurred a week later at San Diego.

1843—Africa, November 29 to December 16.—Four United States vessels demonstrated and landed various parties (one of 200 marines and sailors) to discourage piracy and the slave trade along the Ivory coast, etc., and to punish attacks by the natives on American seamen and shipping.

1844—Mexico.—President Tyler deployed our forces to protect Texas against Mexico, pending Senate approval of a treaty of annexation. (Later rejected.) He defended his action against a Senate resolution of inquiry.

1846–48—Mexico, the Mexican War.—President Polk's occupation of disputed territory precipitated it. War formally declared.

1849—Smyrna.—In July a naval force gained release of an American seized by Austrian officials.

1851—Turkey.—After a massacre of foreigners (including Americans) at Jaffa in January, a demonstration by our Mediterranean Squadron was ordered along the Turkish (Levant) coast. Apparently no shots fired.

1851—Johanna Island (east of Africa), August.—To exact redress for the unlawful imprisonment of the captain of an American whaling brig.

1852–53—Argentina—February 3 to 12, 1852; September 17, 1852 to April (?) 1853.—Marines were landed and maintained in Buenos Aires to protect American interests during a revolution.

1853—Nicaragua—March 11 to 13.—To protect American lives and interests during political disturbances.

1853–54—Japan.—The "opening of Japan" and the Perry Expedition.

1853–54—Ryukyu and Bonin Islands.—Commodore Perry on three visits before going to Japan and while waiting for a reply from Japan made a naval demonstration, landing marines twice, and secured a coaling concession from the ruler of Naha on Okinawa. He also demonstrated in the Bonin Islands. All to secure facilities for commerce.

1854—China—April 4 to June 15 to 17.—To protect American interests in and near Shanghai during Chinese civil strife.

1854—Nicaragua—July 9 to 15.—San Juan del Norte (Greytown) was destroyed to avenge an insult to the American Minister to Nicaragua.

1855—China—May 19 to 21 (?).—To protect American interests in Shanghai. August 3 to 5 to fight pirates near Hong Kong.

1855—Fiji Islands—September 12 to November 4.—To seek reparations for depredations on Americans.

1855—Uruguay—November 25 to 29 or 30.—United States and European naval forces landed to protect American interests during an attempted revolution in Montevideo.

1856—Panama, Republic of New Grenada—September 19 to 22.—To protect American interests during an insurrection.

1856—China—October 22 to December 6.—To protect American interests at Canton during hostilities between the British and the Chinese; and to avenge an unprovoked assault upon an unarmed boat displaying the United States flag.

1857—Nicaragua—April to May, November to December.—To oppose William Walker's attempt to get control of the country. In May Commander C. H. Davis of the United States Navy, with some marines, received Walker's surrender and protected his men from the retaliation of native allies who had been fighting Walker. In November and December of the same year United States vessels *Saratoga, Wabash,* and *Fulton* opposed another attempt of William Walker on Nicaragua. Commodore Hiram Paulding's act of landing marines and compelling the removal of Walker to the United States, was tacitly disavowed by Secretary of State Lewis Cass, and Paulding was forced into retirement.

1858—Uruguay—January 2 to 27.—Forces from 2 United States warships landed to protect American property during a revolution in Montevideo.

1858—Fiji Islands—October 6 to 16.—To chastise the natives for the murder of two American citizens.

1858–59—Turkey.—Display of naval force along the Levant at the request of the Secretary of State after massacre of Americans at Jaffa and mistreatment elsewhere "to remind the authorities (of Turkey) * * * of the power of the United States."

1859—Paraguay.—Congress authorized a naval squadron to seek redress for an attack on a naval vessel in the Parana River during 1855. Apologies were made after a large display of force.

1859—Mexico.—Two hundred United States soldiers crossed the Rio Grande in pursuit of the Mexican bandit Cortina.

1859—China—July 31 to August 2.—For the protection of American interests in Shanghai.

1860—Angola, Portuguese West Africa—March 1.—To protect American lives and property at Kissembo when the natives became troublesome.

1860—Colombia, Bay of Panama—September 27 to October 8.—To protect American interests during a revolution.

1863—Japan—July 16.—To redress an insult to the American flag—firing on an American vessel—at Shimonoseki.

1864—Japan—July 14 to August 3, approximately.—To protect the United States Minister to Japan when he visited Yedo to negotiate concerning some American claims against Japan, and to make his negotiations easier by impressing the Japanese with American power.

1864—Japan—September 4 to 14—Straits of Shimonoseki.—To compel Japan and the Prince of Nagato in particular to permit the Straits to be used by foreign shipping in accordance with treaties already signed.

1865—Panama—March 9 and 10.—To protect the lives and property of American residents during a revolution.

1866—Mexico.—To protect American residents, General Sedgwick and 100 men in November obtained surrender of Matamoras. After 3 days he was ordered by our Government to withdraw. His act was repudiated by the President.

1866—China—June 20 to July 7.—To punish an assault on the American consul at Newchwang; July 14, for consultation with authorities on shore; August 9, at Shanghai, to help extinguish a serious fire in the city.

1867—Island of Formosa—June 13.—To punish a horde of savages who were supposed to have murdered the crew of a wrecked American vessel.

1868—Japan (Osaka, Hiogo, Nagasaki, Yokohama, and Negata)—Mainly, February 4 to 8, April 4 to May 12, June 12 and 13.—To protect American interests during the civil war in Japan over the abolition of the Shogunate and the restoration of the Mikado.

1868—Uruguay—February 7 and 8, 19 to 26.—To protect foreign residents and the customhouse during an insurrection at Montevideo.

1868—Colombia—April 7—at Aspinwall.—To protect passengers and treasure in transit during the absence of local police or troops on the occasion of the death of the President of Colombia.

1870—Mexico, June 17 and 18.—To destroy the pirate ship *Forward*, which had been run aground about 40 miles up the Rio Tecapan.

1870—Hawaiian Islands—September 21.—To place the American flag at half mast upon the death of Queen Kalama, when the American consul at Honolulu would not assume responsibility for so doing.

1871—Korea—June 10 to 12.—To punish natives for depredations on Americans, particularly for murdering the crew of the *General Sherman* and burning the schooner, and for later firing on other American small boats taking soundings up the Salee River.

1873—Colombia (Bay of Panama)—May 7 to 22, September 23 to October 9.—To protect American interests during hostilities over possession of the government of the State of Panama.

1873—Mexico.—United States troops crossed the Mexican border repeatedly in pursuit of cattle and other thieves. There were some reciprocal pursuits by Mexican troops into our border territory. The cases were only technically invasions, if that, although Mexico protested constantly. Notable cases were at Remolina in May 1873 and at Las Cuevas in 1875. Washington orders often supported these excursions. Agreements between Mexico and the United States, the first in 1882, finally legitimized such raids. They continued intermittently, with minor disputes, until 1896.

1874—Hawaiian Islands—February 12 to 20.—To preserve order and protect American lives and interests during the coronation of a new king.

1876—Mexico—May 18.—To police the town of Matamoras temporarily while it was without other government.

1882—Egypt—July 14 to 18.—To protect American interests during warfare between British and Egyptians and looting of the city of Alexandria by Arabs.

1885—Panama (Colon)—January 18 and 19.—To guard the valuables in transit over the Panama Railroad, and the safes and vaults of the company during revolutionary activity. In March, April, and May in the cities of Colon and Panama, to reestablish freedom of transit during revolutionary activity.

1888—Korea—June.—To protect American residents in Seoul during unsettled political conditions, when an outbreak of the populace was expected.

1888-89—Samoa—November 14, 1888, to March 20, 1889.—To protect American citizens and the consulate during a native civil war.

1888—Haiti—December 20.—To persuade the Haitian Government to give up an American steamer which had been seized on the charge of breach of blockade.

1889—Hawaiian Islands—July 30 and 31.—To protect American interests at Honolulu during a revolution.

1890—Argentina.—A naval party landed to protect our consulate and legation in Buenos Aires.

1891—Haiti.—To protect American lives and property on Navassa Island.

1891—Bering Sea—July 2 to October 5.—To stop seal poaching.

1891—Chile—August 28 to 30.—To protect the American consulate and the women and children who had taken refuge in it during a revolution in Valparaiso.

1893—Hawaii—January 16 to April 1.—Ostensibly to protect American lives and property; actually to promote a provisional government under Sanford B. Dole. This action was disavowed by the United States.

1894—Brazil—January.—To protect American commerce and shipping at Rio de Janeiro during a Brazilian civil war. No landing was attempted but there was a display of naval force.

1894—Nicaragua—July 6 to August 7.—To protect American interests at Bluefields following a revolution.

1894-96—Korea—July 24, 1894 to April 3, 1896.—To protect American lives and interests at Seoul during and following the Sino-Japanese War. A guard of marines was kept at the American legation most of the time until April 1896.

1894-95—China.—Marines were stationed at Tientsin and penetrated to Peking for protection purposes during the Sino-Japanese War.

1894-95—China—Naval vessel beached and used as a fort at Newchwang for protection of American nationals.

1895—Colombia—March 8 to 9.—To protect American interests during an attack on the town of Bocas del Toro by a bandit chieftain.

1896—Nicaragua—May 2 to 4.—To protect American interests in Corinto during political unrest.

1898—Nicaragua—February 7 and 8.—To protect American lives and property at Suan Juan del Sur.

1898—Spain.—The Spanish-American War. Fully declared.

1898-99—China—November 5, 1898, to March 15, 1899.—To provide a guard for the legation at Peking and the consulate at Tientsin during contest between the Dowager Empress and her son.

1899—Nicaragua.—To protect American interests at San Juan del Norte, February 22 to March 5, and at Bluefields a few weeks later in connection with the insurrection of Gen. Juan P. Reyes.

1899—Samoa—March 13 to May 15.—To protect American interests and to take part in a bloody contention over the succession to the throne.

1899-1901—Philippine Islands.—To protect American interests following the war with Spain, and to conquer the islands by defeating the Filipinos in their war for independence.

1900—China—May 24 to September 28.—To protect foreign lives during the Boxer rising, particularly at Peking. For many years after this experience a permanent legation guard was maintained in Peking, and was strengthened at times as trouble threatened. It was still there in 1934.

1901—Colombia (State of Panama)—November 20 to December 4.—To protect American property on the Isthmus and to keep transit lines open during serious revolutionary disturbances.

1902—Colombia—April 16 to 23.—To protect American lives and property at Bocas del Toro during a civil war.

1902—Colombia (State of Panama)—September 17 to November 18.—To place armed guards on all trains crossing the Isthmus and to keep the railroad line open.

1903—Honduras—March 23 to 30 or 31.—To protect the American consulate and the steamship wharf at Puerto Cortes during a period of revolutionary activity.

1903—Dominican Republic—March 30 to April 21.—To protect American interests in the city of Santo Domingo during a revolutionary outbreak.

1903—Syria—September 7 to 12.—To protect the American consulate in Beirut when a local Moslem uprising was feared.

1903-14—Panama.—To protect American interests and lives during and following the revolution for independence from Colombia over construction of the Isthmian Canal. With brief intermissions, United States Marines were stationed on the Isthmus from November 4, 1903, to January 21, 1914, to guard American interests.

1904—Dominican Republic—January 2 to February 11.—To protect American interests in Puerto Plata and Sosua and Santo Domingo City during revolutionary fighting.

1904-5—Korea—January 5, 1904, to November 11, 1905.—To guard the American Legation in Seoul.

1904—Tangier, Morocco.—"We want either Perdicaris alive or Raisuli dead." Demonstration by a squadron to force release of a kidnaped American. Marine guard landed to protect consul general.

1904—Panama—November 17 to 24.—To protect American lives and property at Ancon at the time of a threatened insurrection.

1904-05—Korea.—Marine guard sent to Seoul for protection during Russo-Japanese War.

1906-9—Cuba—September 1906 to January 23, 1909.—Intervention to restore order, protect foreigners, and establish a stable government after serious revolutionary activity.

1907—Honduras—March 18 to June 8.—To protect American interests during a war between Honduras and Nicaragua; troops were stationed for a few days or weeks in Trujillo, Ceiba, Puerto Cortez, San Pedro, Laguna, and Choloma.

1910—Nicaragua—February 22.—During a civil war, to get information of conditions at Corinto; May 19 to September 4, to protect American interests at Bluefields.

1911—Honduras—January 26 and some weeks thereafter.—To protect American lives and interests during a civil war in Honduras.

1911—China.—Approaching stages of the nationalist revolution. An ensign and 10 men in October tried to enter Wuchang to rescue missionaries but retired on being warned away.

A small landing force guarded American private property and consulate at Hankow in October.

A marine guard was established in November over the cable stations at Shanghai.

Landing forces were sent for protection to Nanking, Chinkiang, Taku and elsewhere.

1912—Honduras.—Small force landed to prevent seizure by the Government of an American-owned railroad at Puerto Cortez. Forces withdrawn after the United States disapproved the action.

1912—Panama.—Troops, on request of both political parties, supervised elections outside the Canal Zone.

1912—Cuba.—June 5 to August 5.—To protect American interests on the Province of Oriente, and in Habana.

1912—China—August 24 to 26, on Kentucky Island, and August 26 to 30 at Camp Nicholson.—To protect Americans and American interests during revolutionary activity.

1912—Turkey—November 18 to December 3.—To guard the American legation at Constantinople during a Balkan War.

1912–25—Nicaragua—August to November 1912.—To protect American interests during an attempted revolution. A small force serving as a legation guard and as a promoter of peace and governmental stability, remained until August 5, 1925.

1912–41—China.—The disorders which began with the Kuomintang rebellion in 1912, which were redirected by the invasion of China by Japan and finally ended by war between Japan and the United States in 1941, led to demonstrations and landing parties for the protection of U.S. interests in China continuously and at many points from 1912 on to 1941. The guard at Peking and along the route to the sea was maintained until 1941. In 1927, the United States had 5,670 troops ashore in China and 44 naval vessels in its waters. In 1933 we had 3,027 armed men ashore. All this protective action was in general terms based on treaties with China ranging from 1858 to 1901.

1913—Mexico—September 5 to 7.—A few marines landed at Ciaris Estero to aid in evacuating American citizens and others from the Yaqui Valley, made dangerous for foreigners by civil strife.

1914—Haiti—January 29 to February 9, February 20 to 21, October 19.—To protect American nationals in a time of dangerous unrest.

1914—Dominican Republic—June and July.—During a revolutionary movement, United States naval forces by gunfire stopped the bombardment of Puerto Plata, and by threat of force maintained Santo Domingo City as a neutral zone.

1914–17—Mexico.—The undeclared Mexican-American hostilities following the *Dolphin* affair and Villa's raids included capture of Vera Cruz and later Pershing's expedition into northern Mexico.

1915–34—Haiti—July 28, 1915, to August 15,1934.—To maintain order during a period of chronic and threatened insurrection.

1916–24—Dominican Republic—May 1916 to September 1924.—To maintain order during a period of chronic and threatened insurrection.

1917–18.—World War I. Fully declared.

1917–22—Cuba.—To protect American interests during an insurrection and subsequent unsettled conditions. Most of the United States armed forces left Cuba by August 1919, but two companies remained at Camaguey until February 1922.

1918–19—Mexico.—After withdrawal of the Pershing expedition, our troops entered Mexico in pursuit of bandits at least three times in 1918 and six in 1919. In August 1918 American and Mexican troops fought at Nogales.

1918–20—Panama.—For police duty according to treaty stipulations, at Chiriqui, during election disturbances and subsequent unrest.

1918–20—Soviet Russia.—Marines were landed at and near Vladivostok in June and July to protect the American consulate and other points in the fighting between the Bolsheviki troops and the Czech Army which had traversed Siberia from the western front. A joint proclamation of emergency government and neutrality was issued by the American, Japanese, British, French, and Czech commanders in July and our party remained until late August.

In August the project expanded. Then 7,000 men were landed in Vladivostok and remained until January 1920, as part of an allied occupation force.

In September 1918, 5,000 American troops joined the allied intervention force at Archangel, suffered 500 casualties and remained until June 1919.

A handful of marines took part earlier in a British landing on the Murman coast (near Norway) but only incidentally.

All these operations were to offset effects of the Bolsheviki revolution in Russia and were partly supported by Czarist or Kerensky elements. No war was declared. Bolsheviki elements participated at times with us but Soviet Russia still claims damages.

1919—Honduras—September 8 to 12.—A landing force was sent ashore to maintain order in a neutral zone during an attempted revolution.

1920–22—Russia (Siberia)—February 16, 1920, to November 19, 1922.—A marine guard to protect the United States radio station and property on Russian Island, Bay of Vladivostok.

1920—China—March 14.—A landing force was sent ashore for a few hours to protect lives during a disturbance at Kiukiang.

1920—Guatemala—April 9 to 27.—To protect the American Legation and other American interests, such as the cable station, during a period of fighting between Unionists and the Government of Guatemala.

1921—Panama-Cost Rica.—American naval squadrons demonstrated in April on both sides of the Isthmus to prevent war between the two countries over a boundary dispute.

1922—Turkey—September and October.—A landing force was sent ashore with consent of both Greek and Turkish authorities, to protect American lives and property when the Turkish Nationalists entered Smyrna.

1924—Honduras—February 28 to March 31, September 10 to 15.—To protect American lives and interests during election hostilities.

1924—China—September.—Marines were landed to protect Americans and other foreigners in Shanghai during Chinese factional hostilities.

1925—China—January 15 to August 29.—Fighting of Chinese factions accompanied by riots and demonstrations in Shanghai necessitated landing American forces to protect lives and property in the International Settlement.

1925—Honduras—April 19 to 21.—To protect foreigners at La Ceiba during a political upheaval.

1925—Panama—October 12 to 23.—Strikes and rent riots led to the landing of about 600 American troops to keep order and protect American interests.

1926–33—Nicaragua—May 7 to June 5, 1926; August 27, 1926, to January 3 1933.—The coup d'etat of General Chamorro aroused revolutionary activities leading to the landing of American marines to protect the interests of the United States. United States forces came and went, but seem not to have left the country entirely until January 3, 1933. Their work included activity against the outlaw leader Sandino in 1928.

1926—China—August and September.—The Nationalist attack on Hankow necessitated the landing of American naval forces to protect American citizens. A small guard was maintained at the consulate general even after September 16, when the rest of the forces were withdrawn. Likewise, when Nationalist forces captured Kiukiang, naval forces were landed for the protection of foreigners November 4 to 6.

1927—China—February.—Fighting at Shanghai caused American naval forces and marines to be increased there. In March a naval guard was stationed at the American consulate at Nanking after Nationalist forces captured the city. American and British destroyers later used shell fire to protect Americans and other foreigners. "Following this incident additional forces of marines and naval vessels were ordered to China and stationed in the vicinity of Shanghai and Tientsin."

1933—Cuba.—During a revolution against President Gerardo Machado naval forces demonstrated but no landing was made.

1940—Newfoundland, Bermuda, St. Lucia, Bahamas, Jamaica, Antigua, Trinidad, and British Guiana.—Troops were sent to guard air and naval bases obtained by negotiation with Great Britain. These were sometimes called lend-lease bases.

1941—Greenland.—Taken under protection of the United States in April.

1941—Netherlands (Dutch Guiana).—In November the President ordered American troops to occupy Dutch Guiana but by agreement with the Netherlands government in exile, Brazil cooperated to protect aluminum ore supply from the bauxite mines in Surinam.

1941—Iceland.—Taken under the protection of the United States, with consent of its Government, for strategic reasons.

1941—Germany.—Sometime in the spring the President ordered the Navy to patrol ship lanes to Europe. By July our warships were convoying and by Sep-

tember were attacking German submarines. There was no authorization of Congress or declaration of war. In November, the Neutrality Act was partly repealed to protect military aid to Britain, Russia, etc.

1941-45—Germany, Italy, Japan, etc.—World War II. Fully declared.

1950-1953.—U.S. responded to North Korean invasion of South Korea by going to its assistance, pursuant to United Nations Security Council resolutions. Congressional authorization was not sought.

1958. Marines were landed in Lebanon at the invitation of its government to help protect against threatened insurrection supported from the outside.

1962.—Cuba.—President Kennedy instituted a "quarantine" on the shipment of offensive missiles to Cuba from the Soviet Union. He also warned the Soviet Union that the launching of any missile from Cuba against any nation in the Western Hemisphere would bring about U.S. nuclear retaliation on the Soviet Union. A negotiated settlement was achieved in a few days.

1962-70.—Laos.—From October 1962 until the present, the United States has played a role of military support in Laos.

1964-1970.—War in Vietman.—U.S. military advisers had been in South Vietnam for a decade, and their numbers had been increased as military position of Saigon government became weaker. After the attacks on U.S. destroyers in the Tonkin Gulf, President Johnson asked for a resolution expressing U.S. determination to support freedom and protect peace in Southeast Asia. Congress responded with the Tonkin Gulf Resolution, expressing support for "all necessary measures" the President might take to repel armed attack against U.S. forces and prevent further aggression. Following this resolution, and following a Communist attack on a U.S. installation in central Vietnam, the U.S. escalated its participation in the war.

1965.—Dominican Republic.—Intervention to protect lives and property during a Dominican revolt. More troops were sent as the U.S. feared the revolutionary forces were coming increasingly under Communist control.

1970.—Cambodia.—U.S. troops were ordered into Cambodia to clean out Communist sanctuaries from which Viet Cong and North Vietnamese can attack U.S. and South Vietnamese forces in Vietnam as stated by the President. The object of this attack, which lasted from April 30 to June 30, was to ensure the continuing safe withdrawal of American forces from South Vietnam and to assist the program of Vietnamization.

APPENDIX III

SELECTED CONGRESSIONAL RESOLUTIONS

TROOPS TO EUROPE—SENATE RESOLUTION 99, 82d CONGRESS, AGREED TO APRIL 4, 1951

RESOLUTION

Whereas the foreign policy and military strength of the United States are dedicated to the protection of our national security, the preservation of the liberties of the American people, and the maintenance of world peace; and

Whereas the North Atlantic Treaty, approved by the Senate by a vote of 82–13, is a major and historic act designed to build up the collective strength of the free peoples of the earth to resist aggression, and to preserve world peace; and

Whereas the security of the United States and its citizens is involved with the security of its partners under the North Atlantic Treaty, and the commitments of that treaty are therefore an essential part of the foreign policy of the United States; and

Whereas article 3 of the North Atlantic Treaty pledges that the United States and other parties thereto "separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack"; and

Whereas recent events have threatened world peace and as a result all parties to the North Atlantic Treaty are individually and collectively mobilizing their productive capacities and manpower for their self-defense; and

Whereas the free nations of Europe are vital centers of civilization, freedom, and production, and their subjugation by totalitarian forces would weaken and endanger the defensive capacity of the United States and the other free nations; and

Whereas the success of our common defense effort under a unified command requires the vigorous action and the full cooperation of all treaty partners in the supplying of men and materials on a fair and equitable basis, and General Eisenhower has testified that the "bulk" of the land forces should be supplied by our European allies and that such numbers supplied should be the "major fraction" of the total number: Now, therefore, be it

Resolved, That—

1. The Senate approves the action of the President of the United States in cooperating in the common defensive effort of the North Atlantic Treaty nations by designating, at their unanimous request, General of the Army Dwight D. Eisenhower as Supreme Allied Commander, Europe, and in placing Armed Forces of the United States in Europe under his command;

2. it is the belief of the Senate that the threat to the security of the United States and our North Atlantic Treaty partners makes it necessary for the United States to station abroad such units of our Armed Forces as may be necessary and appropriate to contribute our fair share of the forces needed for the joint defense of the North Atlantic area;

3. it is the sense of the Senate that the President of the United States as Commander in Chief of the Armed Forces, before taking action to send units of ground troops to Europe under article 3 of the North Atlantic Treaty, should consult the Secretary of Defense and the Joint Chiefs of Staff, the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, and the Armed Services Committees of the Senate and the House of Representatives, and that he should likewise consult the Supreme Allied Commander, Europe;

4. it is the sense of the Senate that before sending units of ground troops to Europe under article 3 of the North Atlantic Treaty the Joint Chiefs of Staff shall certify to the Secretary of Defense that in their opinion the parties to the North Atlantic Treaty are giving, and have agreed to give full, realistic force and effect to the requirement of article 3 of said treaty that "by means of continuous and effective self-help mutual aid" they will "maintain and develop their

individual and collective capacity to resist armed attack," specifically insofar as the creation of combat units is concerned;

5. the Senate herewith approves the understanding that the major contribution to the ground forces under General Eisenhower's command should be made by the European members of the North Atlantic Treaty, and that such units of United States ground forces as may be assigned to the above command shall be so assigned only after the Joint Chiefs of Staff certify to the Secretary of Defense that in their opinion such assignment is a necessary step in strengthening the security of the United States; and the certified opinions referred to in paragraphs 4 and 5 shall be transmitted by the Secretary of Defense to the President of the United States, and to the Senate Committees on Foreign Relations and Armed Services, and to the House Committees on Foreign Affairs and Armed Services as soon as they are received;

6. it is the sense of the Senate that, in the interests of sound constitutional processes, and of national unity and understanding, congressional approval should be obtained of any policy requiring the assignment of American troops abroad when such assignment is in implementation of article 3 of the North Atlantic Treaty; and the Senate hereby approves the present plans of the President and the Joint Chiefs of Staff to send four additional divisions of ground forces to Western Europe, but it is the sense of the Senate that no ground troops in addition to such four divisions should be sent to Western Europe in implementation of article III of the North Atlantic Treaty without further congressional approval;

7. it is the sense of the Senate that the President should submit to the Congress at intervals of not more than six months reports on the implementation of the North Atlantic Treaty, including such information as may be made available for this purpose by the Supreme Allied Commander, Europe;

8. it is the sense of the Senate that the United States should seek to eliminate all provisions of the existing treaty with Italy which impose limitations upon the military strength of Italy and prevent the performance by Italy of her obligations under the North Atlantic Treaty to contribute to the full extent of her capacity to the defense of Western Europe;

9. it is the sense of the Senate that consideration should be given to the revision of plans for the defense of Europe as soon as possible so as to provide for utilization on a voluntary basis of the military and other resources of Western Germany and Spain, but not exclusive of the military and other resources of other nations.

The Formosa Resolution—Public Law 84-4, Approved January 29, 1955

JOINT RESOLUTION AUTHORIZING THE PRESIDENT TO EMPLOY THE ARMED FORCES OF THE UNITED STATES FOR PROTECTING THE SECURITY OF FORMOSA, THE PESCADORES AND RELATED POSITIONS AND TERRITORIES OF THAT AREA

Whereas the primary purpose of the United States, in its relations with all other nations, is to develop and sustain a just and enduring peace for all; and

Whereas certain territories in the West Pacific under the jurisdiction of the Republic of China are now under armed attack, and threats and declarations have been and are being made by the Chinese Communists that such armed attack is in aid of and in preparation for armed attack on Formosa and the Pescadores;

Whereas such armed attack if continued would gravely endanger the peace and security of the West Pacific Area and particularly of Formosa and the Pescadores; and

Whereas the secure possession by friendly governments of the Western Pacific Island chain, of which Formosa is a part, is essential to the vital interests of the United States and all friendly nations in or bordering upon the Pacific Ocean; and

Whereas the President of the United States on January 6, 1955, submitted to the Senate for its advice and consent to ratification a Mutual Defense Treaty between the United States of America and the Republic of China, which recognizes that an armed attack in the West Pacific area directed against territories, therein described, in the region of Formosa and the Pescadores, would be dangerous to the peace and safety of the parties to the treaty: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be and he hereby is authorized to employ the Armed Forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa and the Pescadores against armed attack, this authority to include the securing and protection

of such related positions and territories of that area now in friendly hands and the taking of such other measures as he judges to be required or appropriate in assuring the defense of Formosa and the Pescadores.

The resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, and shall so report to the Congress.

Middle East Resolution, as Amended—Public Law 85-7, Approved March 9, 1957, as amended by the Foreign Assistance Act of 1961, Public Law 87-195, Approved September 4, 1961

JOINT RESOLUTION TO PROMOTE PEACE AND STABILITY IN THE MIDDLE EAST

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be and hereby is authorized to cooperate with and assist any nation or group of nations in the general area of the Middle East desiring such assistance in the development of economic strength dedicated to the maintenance of national independence.

Sec 2. The President is authorized to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance. Furthermore, the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism: *Provided*, That such employment shall be consonant with the treaty obligations of the United States and with the Constitution of the United States.

Sec. 3. The President is hereby authorized to ues during the balance of fiscal year 1957 for economic and military assistance under this joint resolution not to exceed $200,000,000 from any appropriation now available for carrying out the provisions of the Mutual Security Act of 1954, as amended, in accord with the provisions of such Act: *Provided*, That, whenever the President determines it to be important to the security of the United States such use may be under the authority of section 401(a) of the Mutual Security Act of 1954, as amended (except that the provisions of section 105(a) thereof shall not be waived), and without regard to the provisions of section 105 of the Mutual Security Appropriation Act, 1957: *Provided further*, That obligations incurred in carrying out the purposes of the first sentence of section 2 of this joint resolution shall be paid only out of appropriations for military assistance, and obligations incurred in carrying out the purposes of the first section of this joint resolution shall be paid only out of appropriations other than those for military assistance. This authorization is in addition to other existing authorizations with respect to the use of such appropriations. None of the additional authorizations contained in this section shall be used until fifteen days after the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, the Committees on Appropriations of the Senate and the House of Representatives and, when military assistance is involved, the Committees on Armed Services of the Senate and the House of Representatives have been furnished a report showing the object of the proposed use, the country for the benefit of which such use is intended, and the particular appropriation or appropriations for carrying out the provisions of the Mutual Security Act of 1954, as amended, from which the funds are proposed to be derived: *Provided*, That funds available under this section during the balance of fiscal year 1957 shall, in the case of any such report submitted during the last fifteen days of the fiscal year, remain available for use under this section for the purposes stated in such report for a period of twenty days following the date of submission of such report. Nothing contained in this joint resolution shall be construed as itself authorizing the appropriation of additional funds for the purpose of carrying out the provisions of the first section or of the first sentence of section 2 of this joint resolution.

Sec. 4. The President should continue to furnish facilities and military assistance, within the provisions of applicable law and established policies, to the United Nations Emergency Force in the Middle East, with a view to maintaining the truce in that region.

Sec. 5. The President shall whenever appropriate report to the Congress his action hereunder.

SEC. 6. This joint resolution shall expire when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations or otherwise except that it may be terminated earlier by a concurrent resolution of the two Houses of Congress.

CUBAN RESOLUTION—PUBLIC LAW 87-733, APPROVED OCTOBER 3, 1962

JOINT RESOLUTION EXPRESSING THE DETERMINATION OF THE UNITED STATES WITH RESPECT TO THE SITUATION IN CUBA

Whereas President James Monroe, announcing the Monroe Doctrine in 1823, declared that the United States would consider any attempt on the part of European powers "to extend their system to any portion of this hemisphere as dangerous to our peace and safety"; and

Whereas in the Rio Treaty of 1947 the parties agreed that "an armed attack by any State against an American State shall be considered as an attack against all the American States, and, consequently, each one of the said contracting parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by article 51 of the Charter of the United Nations"; and

Whereas the Foreign Ministers of the Organization of American States at Punta del Este in January 1962 declared: "The present Government of Cuba has identified itself with the principles of Marxist-Leninist ideology, has established a political, economic, and social system based on that doctrine, and accepts military assistance from extracontinental Communist powers, including even the threat of military intervention in America on the part of the Soviet Union"; and

Whereas the international Communist movement has increasingly extended into Cuba its political, economic, and military sphere of influence: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States is determined—

(a) to prevent by whatever means may be necessary, including the use of arms, the Marxist-Leninist regime in Cuba from extending, by force or the threat of force, its aggressive or subversive activities to any part of this hemisphere;

(b) to prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States; and

(c) to work with the Organization of American States and with freedom-loving Cubans to support the aspirations of the Cuban people for self-determination.

BERLIN RESOLUTION—HOUSE CONCURRENT RESOLUTION 570, 87TH CONGRESS, PASSED OCTOBER 10, 1962

CONCURRENT RESOLUTION

Whereas the primary purpose of the United States in its relations with all other nations is and has been to develop and sustain a just and enduring peace for all; and

Whereas it is the purpose of the United States to encourage and support the establishment of a free, unified, and democratic Germany; and

Whereas in connection with the termination of hostilities in World War II the United States, the United Kingdom, France, and the Soviet Union freely entered into binding agreements under which the four powers have the right to remain in Berlin, with the right of ingress and egress, until the conclusion of a final settlement with the Government of Germany; and

Whereas no such final settlement has been concluded by the four powers and the aforementioned agreements continue on force: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress—

(a) that the continued exercise of United States, British, and French rights in Berlin constitutes a fundamental political and moral determination;

(b) that the United States would regard as intolerable any violation by the Soviet Union directly or through others of those rights in Berlin, including the right of ingress and egress;

(c) that the United States is determined to prevent by whatever means may be necessary, including the use of arms, any violation of those rights by the Soviet Union directly or through others, and to fulfill our commitment to the people of Berlin with respect to their resolve for freedom.

Southeast Asia Resolution (Tonkin Gulf Resolution)—Public Law 88–408, Approved August 10, 1964

JOINT RESOLUTION TO PROMOTE THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY IN SOUTHEAST ASIA

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Sec. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

Sec. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

National Commitments Resolution—Senate Resolution 85, 91st Congress, Agreed to June 25, 1969

Whereas accurate definition of the term "national commitment" in recent years has become obscured: Now, therefore, be it

Resolved, That (1) a national commitment for the purpose of this resolution means the use of the Armed Forces of the United States on foreign territory, or a promise to assist a foreign country, government, or people by the use of the Armed Forces or financial resources of the United States, either immediately or upon the happening of certain events, and (2) it is the sense of the Senate that a national commitment by the United States results only from affirmative action taken by the executive and legislative branches of the United States Government by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment.

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